

No. 11625

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*see vol. 2470*

United States

Circuit Court of Appeals

For the Ninth Circuit.

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ESTATE OF BELLE ALICE HAMBURGER  
NATHAN, Evelyn Hamburger, Executrix,  
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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Transcript of the Record

In Two Volumes

VOLUME I

Pages 1 to 312

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Upon Petition to Review a Decision of the Tax Court  
of the United States



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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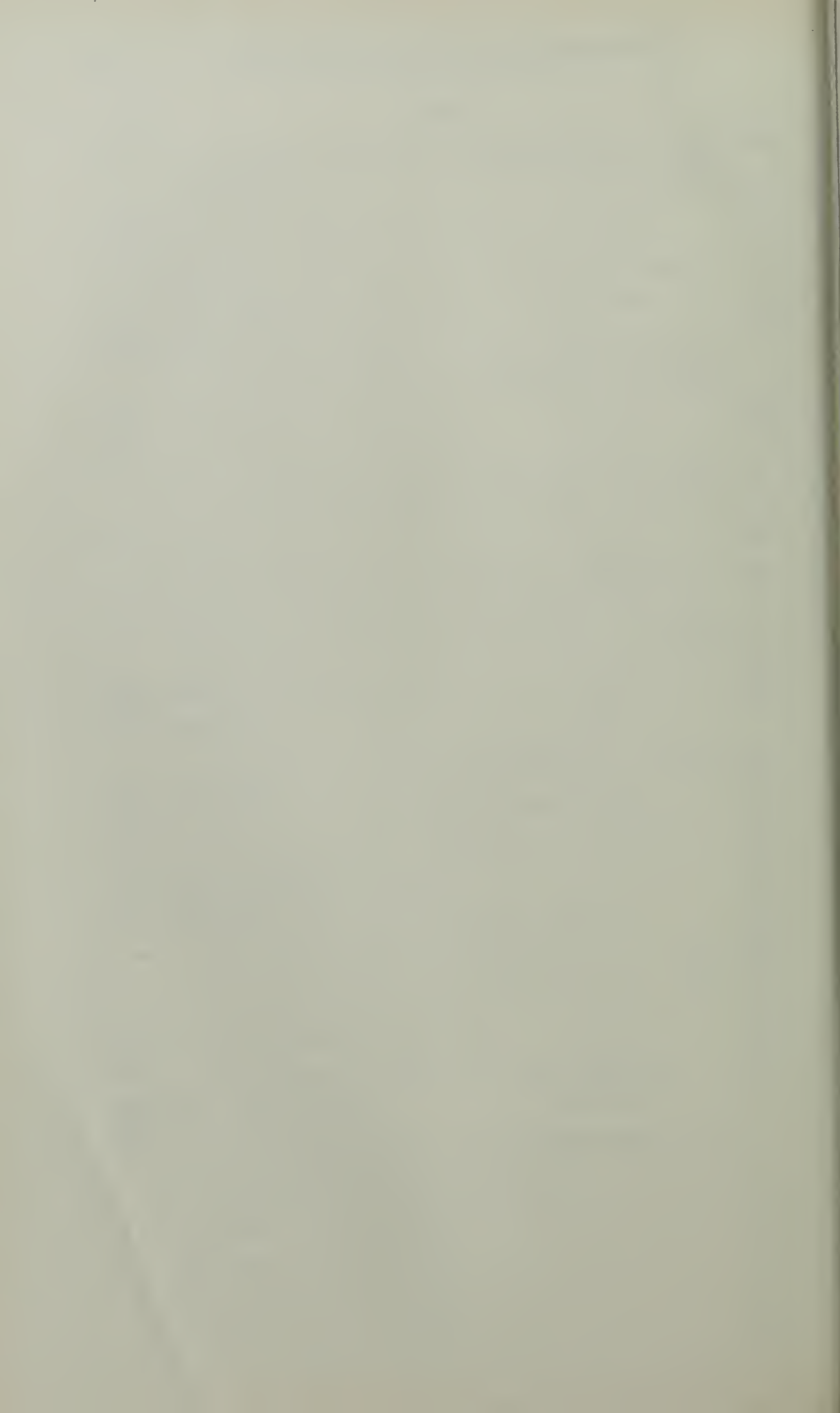
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## APPEARANCES

For Taxpayer:

CLAUDE I. PARKER, ESQ.,

RALPH W. SMITH, ESQ.,

L. A. LUCE, ESQ.,

J. EVERETT BLUM, ESQ.

For Commissioner:

E. A. TONJES, ESQ.

Docket No. 3992

ESTATE OF BELLE ALICE HAMBURGER  
NATHAN, P. L. NATHAN et al., Executors  
[Amended Title: (See Order of 3/31/47), Es-  
tate of Belle Alice Hamburger Nathan, Evelyn  
Hamburger, Executrix],

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Transferred to Judge Harlan 3/4/46

## DOCKET ENTRIES

1944

- Feb. 9—Petition received and filed. Taxpayer no-  
tified. Fee paid.
- Feb. 9—Copy of petition served on General Coun-  
sel.
- Mar. 28—Answer filed by General Counsel.
- Mar. 28—Request for hearing in Los Angeles, Cali-  
fornia.
- Mar. 31—Notice issued placing proceeding on Los  
Angeles, Calif., calendar. Service of an-  
swer and request made.

1945

- Jan. 2—Hearing set February 19, 1945, in Los An-  
geles, California.
- Jan. 29—Motion for continuance to the next Los  
Angeles, calendar filed by taxpayer.  
1/30/45 Granted.



1945

Aug. 14—Hearing set 10/1/45 in Los Angeles, California.

Oct. 4

and 5—Hearing had before Judge Mellott on merits. Appearance of J. Everett Blum as counsel filed. Stipulation of facts, amended petition and answer to amended petition filed. Briefs due 11/19/45. Replies 12/19/45.

Nov. 6—Transcript of hearing 10/4/45 filed.

Nov. 6—Transcript of hearing 10/5/45 filed.

Nov. 19—Motion for extension to Dec. 6, 1945, to file opening brief and Jan. 7, 1946, to file reply brief, filed by taxpayer. 11/20/45 Granted.

Nov. 19—Brief filed by General Counsel. Served 12/1/45.

Dec. 7—Brief filed by taxpayer. (1) Copies received 12/10/45. Served 12/11/45.

1946

Jan. 7—Reply brief filed by taxpayer. 1/8/46 Copy served.

July 17—Memorandum findings of fact and opinion rendered. Judge Harlan, Div. 11. Decision will be entered under Rule 50. Copy served 7/18/46.

July 22—Order amending memorandum findings of fact and opinion, entered.

Aug. 15—Motion for review by the Full Court with points and authority in support thereof, filed by taxpayer. 8/20/46 Denied.

1946

Aug. 15—Motion for rehearing filed by taxpayer.  
8/19/46 Denied.

Aug. 15—Motion for reconsideration filed by taxpayer. 8/19/46 Denied.

Dec. 4—Respondent's computation for entry of Decision filed. [1\*]

Dec. 10—Hearing set 1/8/47 on settlement.

Dec. 23—Consent to settlement filed by taxpayer.

Dec. 31—Decision entered. Judge Harlan, Div. 11.

1947

Mar. 25—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.

Mar. 25—Proof of service filed.

Mar. 25—Statement of points to be relied upon and designation of record to be printed, filed by taxpayer.

Mar. 31—Motion to amend title of the above entitled action on appeal, filed by taxpayer.  
3/31/47 Granted. Proof of service thereon.  
Affidavit attached.

Mar. 31—Motion to amend petition for review of Decision of The Tax Court of the United States, embodying amendment, filed by taxpayer. 3/31/47 Granted.

Apr. 2—Copy of motion to amend served on General Counsel.

Apr. 15—Designation of record with proof of service thereon filed by taxpayer. [2]

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\* Page numbering appearing at top of page of original certified Transcript of Record.



[Title of Tax Court and Cause.]

### PETITION

The above named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, LA:ET:90D:NAB, dated Dec. 27, 1943, and as a basis for their proceedings allege as follows:

1. That your petitioners are the duly appointed, qualified and acting Executors of the Estate of Belle Alice Hamburger Nathan, deceased, having been so appointed by the Superior Court of the State of California, in and for the County of Los Angeles; their residence for mail in this proceeding being 808 Bank of America Building, 650 South Spring Street, Los Angeles 14, California.

2. The notice of deficiency (a copy of which is attached hereto marked Exhibit "A") was mailed to petitioner on Dec. 27, 1943.

3. The taxes in controversy are deficiency federal estate taxes in the amount of \$103,177.16, and in addition thereto the sum of \$51,229.95 being overpayment of federal estate taxes on Form 706, or the total controversial tax of \$154,407.11. [3]

4. The determination of said tax set forth in said notice of deficiency is based upon the following errors:

(a) Respondent erred in determining a value in excess of \$212,908.50 on the 425.817

shares of stock of the A. Hamburger & Sons, Inc., a California corporation, described under Item 37 of Schedule B of Form 706, and under Item 37 on Page 3 of Exhibit "A" hereto attached.

(b) Respondent erred in determining a value in excess of \$220,162.16 on the 104.167 shares of stock of the Hamburger Realty Company, a California corporation, described under Item 38 of Schedule B of Form 706, and under Item 38 on Page 3 of Exhibit "A" hereto attached, and erred in failing to accept as the market value thereof the said sum of \$220,162.16 as returned.

(c) Respondent erred in failing to allow as a deduction additional compensation for the Executors, in relation to the administration of the estate and the handling of death tax matters and the prosecution of this appeal, in the sum of \$10,000.00 over and above the fees heretofore allowed.

(d) Respondent erred in failing to allow as a deduction additional attorneys' fees in the sum of \$15,000.00, for attorneys' services, employed by the executors in the matter of protesting the determination of respondent in relation to the federal estate tax, the preparation of the within petition and the prosecution of this Appeal, over and above the fees heretofore allowed.

(e) Respondent erred in failing to allow as a deduction Items 4 to 8 inclusive, and Item 10,

under Schedule K of Form 706, and under Debts of Decedent on Page 5 of Exhibit "A" hereto attached.

(f) Respondent erred in determining a federal estate tax on the estate of said decedent in excess of the sum of \$95,320.00. [4]

5. The facts upon which the petitioners rely as the basis of this proceeding are as follows:

(a) That among the assets of decedent's estate, as disclosed in said Form 706, under Item 37 of Schedule B thereof, were 425.817 shares of the common stock of A. Hamburger & Sons, Inc., a California corporation; that petitioners inadvertently returned said stock at \$418,735.66 or \$983.134 per share. That said respondent determined a value of \$510,980.40 on said shares of stock or \$1,202.16 per share, as indicated by said Exhibit "A" hereto attached. That the value determined by the respondent is excessive and is not the fair market value of said stock at the basic date. That in truth and in fact the fair market value of the said 425.817 shares of stock on the basic date was not in excess of \$212,908.50 or \$500.00 per share.

(b) That among the assets of decedent's estate, as disclosed in said Form 706, under Item 38 of Schedule B thereof, were 104.167 shares of the common stock of Hamburger Realty Company, a California corporation; that petitioners returned said stock at \$220,162.16 or \$2,113.55 per share. That said respondent de-



terminated a value of \$505,209.95 on said shares of stock or \$4,895.97 per share, as indicated by said Exhibit "A" hereto attached. That the value determined by the respondent is excessive and is not the fair market value of said stock at the basic date. That the fair market value of said stock on the basic date is the sum of \$220,-162.16 or \$2,113.55 per share.

(c) That petitioners have incurred, which are unpaid, for services of the Executors of the estate of said decedent, and subjected themselves to liability for additional executors' fees in relation to matters of the estate, and particularly in relation [5] to the protesting and concluding the determination of the federal estate tax presented by this petition, in an additional sum of \$10,000.00.

(d) That petitioners have subjected themselves to the liability for attorneys fees, over and above attorneys' fees heretofore paid or allowed, in the sum of \$15,000.00, in relation to the determination of the federal estate tax, the preparation of this petition and the prosecution to final determination of the above entitled matter.

(e) That respondent failed to allow as deductions under "Debts of Decedent", Items 4 to 8 inclusive, and Item 10, under Schedule K, of Form 706, which debts were paid by your petitioners; that said debts were contractual liabilities of decedent which were unpaid at the time of her death and were therefore liabilities

of her estate under the California law. That said debts were allowed to petitioners as charges against said estate in their accounting and Order of the Court.

(f) That petitioners were in error in returning a value on the stock of A. Hamburger & Sons, Inc., in Form 706 in excess of the sum of \$212,908.50, and petitioners claim refund of the returned tax in the sum of \$51,229.95, with interest thereon as provided by law.

Wherefore, petitioners pray that this Honorable Court may hear this proceeding and reverse the action of the respondent claimed of herein and order a refund of the federal estate tax erroneously overpaid in the sum of \$51,229.95, together with interest thereon as provided by law, and order a redetermination of the proposed deficiency.

/s/ CLAUD I. PARKER,

and

/s/ RALPH W. SMITH.

Of Counsel:

/s/ L. A. LUCE. [6]

State of California,  
County of Los Angeles—ss.

P. L. Nathan and Evelyn Hamburger, each being first duly sworn, upon their oath, depose and say:

That they are the duly appointed, qualified and acting Executors of the Estate of Belle Alice Hamburger Nathan, deceased, and are the petitioners

named in the foregoing petition; that they have read the foregoing petition or had the same read to them, and are familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief and those facts they believe to be true.

/s/ P. L. NATHAN,

/s/ EVELYN HAMBURGER.

Subscribed and sworn to before me this 3rd day of February, 1944.

/s/ PEARL ANDERSON,

Notary Public in and for the County of Los Angeles, State of California. [7]

EXHIBIT "A"

Form 1279

Copy

SN-IT-7

Office of Internal Revenue, Agent in Charge Los Angeles Division, LA:ET:90D:NAB, Treasury Department, Internal Revenue Service, 417 South Hill Street, Los Angeles 13, California.

Dec. 27, 1943

Estate of Belle Alice Hamburger Nathan,  
P. L. Nathan et al., Executors,  
505 South Windsor Boulevard,  
Los Angeles, California.

Gentlemen:

You are advised that the determination of the estate tax liability of the above-named estate, dis-



closes a deficiency of \$103,177.16 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA: Conf. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

ROBERT E. HANNEGAN,

Commissioner,

By /s/ R. B. SULLIVAN,

Acting Internal Revenue

Agent in Charge.

NAB:vmc

Enclosures:

Statement

Form of Waiver. [8]

LA:ET:90D:NAB. District of Sixth California.  
 Estate of Belle Alice Hamburger Nathan. Date  
 of death: October 13, 1940.

### Statement

	Liability	Assessed	Deficiency
Estate tax .....	\$249,724.21	\$146,547.05	\$103,177.16

In making this determination of the Federal estate tax liability of the above named estate, careful consideration has been given to the report of examination dated October 21, 1942, to the protest dated December 23, 1942, and to the statements made at the conferences held on February 9, 1943, March 30, 1943 and November 4, 1943.

A copy of this letter and statement has been mailed to your representative, Ralph W. Smith, 808 Bank of America Building, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you.

### Adjustments to Net Estate

Net estate for basic tax as disclosed by return	\$ 708,606.56
Additions to value of net estate and decreases in deductions:	
Stocks and bonds .....	\$379,788.27
Other miscellaneous prop- erty .....	2,411.10
Executors' commission.....	6,000.00
Miscellaneous administration expenses .....	4,028.17
Debts of decedent .....	1,001.86
	<hr/>
	393,229.40
	<hr/>
	\$1,101,835.96
Reductions in value of net estate and increases in deductions:	
Attorney's fees .....	8,000
	<hr/>
Net estate for basic tax as adjusted.....	\$1,093,835.96
Net estate for additional tax as adjusted.....	\$1,153,835.96



## Explanation of Adjustments

Stocks and bonds:		Return	Determined
Item 1	\$	2,152.50 }	\$ 2,230.63 }
Accrued interest .....		20.16 }	16.03 }
Item 2		563.12 }	557.66 }
Accrued interest .....		5.04 }	4.51 }
Item 3		225.34 }	223.06 }
Interest .....		2.02 }	1.80 }
Item 4		56.31 }	55.76 }
Interest .....		.50 }	.45 }
Item 5		542.60 }	540.63 }
Interest .....		1.46 }	.97 }
Item 6		2,170.40 }	2,162.50 }
Interest .....		5.84 }	3.89 }
Item 7		542.60 }	540.63 }
Interest .....		1.46 }	.97 }
Item 8		2,170.40 }	2,162.50 }
Interest .....		5.84 }	3.89 }
Item 9		542.60 }	540.63 }
Interest .....		1.46 }	.97 }
Item 10		2,170.40 }	2,162.50 }
Interest .....		5.84 }	3.89 }
Item 11		10,000.00 }	10,000.00 }
Interest .....		None }	65.00 }
Item 12		52,890.00 }	52,890.00 }
Interest .....		54.00 }	603.47 }
Item 13		10,578.00 }	10,578.00 }
Interest .....		10.80 }	160.69 }
Item 14		900.96 }	892.25 }
Interest .....		8.08 }	7.21 }
Item 15		35,400.00 }	35,400.00 }
Interest .....		49.80 }	630.42 }
Item 16		35,400.00 }	35,400.00 }
Interest .....		49.80 }	630.42 }
Item 17		23,600.00 }	23,600.00 }
Interest .....		33.20 }	420.28 }
Item 18		1,126.25 }	1,115.31 }
Interest .....		10.00 }	9.01 }
Item 19		563.12 }	557.66 }
Interest .....		5.04 }	4.51 }

Stocks and bonds :		Return	Determined
Item 20	\$	347.86 }	\$ 334.59 }
Interest .....		3.03 }	2.90 }
Item 21		542.60 }	540.63 }
Interest .....		1.46 }	.97 }
Item 22		2,170.40 }	2,162.50 }
Interest .....		5.84 }	3.89 }
Item 23		22,443.60 }	22,456.25 }
Interest .....		70.00 }	46.67 }
Item 24		1,085.20 }	1,081.25 }
Interest .....		2.92 }	1.94 }
Item 25		1,077.80 }	1,080.00 }
Interest .....		9.17 }	8.19 }
Item 26		56.31 }	55.77 }
Interest .....		.50 }	.45 }
Item 27		788.37 }	780.72 }
Interest .....		7.07 }	6.31 }
Item 28		1,126.25 }	1,115.31 }
Interest .....		10.08 }	9.01 }
Item 29		900.96 }	892.25 }
Interest .....		8.08 }	7.21 }
Item 30		1,126.25 }	1,115.31 }
Interest .....		10.08 }	9.01 }
Item 31		2,155.60 }	2,160.00 }
Interest .....		18.34 }	16.39 }
Item 32		5,534.00 }	5,543.75 }
Interest .....		16.00 }	10.69 }
Item 33		2,155.60 }	2,160.00 }
Interest .....		18.34 }	16.39 }
Item 34		5,534.00 }	5,543.75 }
Interest .....		16.00 }	10.69 }
Item 35		5,534.00 }	5,543.75 }
Interest .....		16.00 }	10.69 }
Item 36		11,278.00 }	11,278.00 }
Interest .....		57.29 }	102.43 }
Item 37		418,735.66	510,980.40
Item 38		220,162.16	505,209.95
Totals .....		\$884,889.84	\$1,264,678.11
Increase .....			\$ 379,788.27

The adjustments with respect to items one to thirty-six inclusive are based on the mean between the high and low sales of the New York Stock Exchange. [11]

The value of 425.817 shares of capital stock of A. Hamburger & Sons has been determined as \$510,980.46 in lieu of \$418,735.66 returned.

The value of 104.167 shares of capital stock of Hamburger Realty Co. has been determined at \$505,209.95 in lieu of \$220,162.16 returned.

Other miscellaneous property:

	Return	Determined
Item 3 .....	\$24,957.12	\$27,265.02
Items 324 to 415 inc.....	437.55	426.75
Costume jewelry .....	0.00	25.00
1935 tax refund .....	0.00	89.00
	<hr/>	<hr/>
	\$25,394.67	\$27,805.77
Increase .....		\$ 2,411.10
Executor's commission .....	\$15,000.00	\$ 9,000.00
Miscellaneous administration expenses:		
Item 2 .....	\$ 42.97	None
Item 3 .....	281.39	220.41
Item 4 .....	1,320.56	1,034.92
Item 5 .....	1,115.95	874.12
Item 6 .....	3.85	None
Item 8 .....	70.00	None
Item 9 .....	70.00	None
Item 10 .....	66.07	None
Item 11 .....	65.12	None
Item 12 .....	15.12	None
Item 13 .....	70.00	None
Item 21 .....	1,115.95	None
Item 22 .....	1,320.56	None
Item 23 .....	600.08	None
	<hr/>	<hr/>
Totals .....	\$ 6,157.62	\$ 2,129.45
Decrease .....		\$ 4,028.17

Items 2, 6, 8 to 13 incl., and 21 to 23 incl., covering interest, insurance, taxes, etc., are disallowed inas-much as the same are for periods beginning subse-quent to date of the decedent's death.

Items 3 to 5 inclusive, covering interest items, are recommended for allowance in amounts which had accrued to date of the decedent's death.

Debts of Decedent:

	Return	Determined
Item 4 .....	\$ 26.54	None
Item 5 .....	20.00	None
Item 6 .....	30.39	None
Item 7 .....	30.00	None
Item 8 .....	32.00	None
Item 10 .....	27.10	None
Item 24 .....	23,186.64	\$22,350.81
	<hr/>	<hr/>
Totals .....	\$23,352.67	\$22,350.81
Decrease .....		\$ 1,001.86

Items 4 to 8 inclusive and 10, under "Debts of decedent", cover debts which are not proper deduc-tions under the provisions of the Federal estate tax law, decedent having left a husband surviving her with a solvent estate, who, under the law of California, was liable for the same.

Item 24 is allowed in amount of annuity, or pres-ent worth value, computed in accordance with Column 2, Table A, Page 30, Estate Tax Regulation as follows:

$208.331\frac{1}{3} \times 12 \times 8.78052 \times 1.01820$  or \$22,350.81

Attorney's fees .....	\$22,000.00	\$30,000.00
-----------------------	-------------	-------------



Computation of Estate Tax

	Return	Determined	
Gross estate for			
basic tax .....	\$1,122,437.32	\$1,504,636.69	
Deductions .....	413,830.76	410,800.73	
	<hr/>	<hr/>	
Net estate for			
basic tax .....	\$ 708,606.56	\$1,093,835.96	
Net estate for			
additional tax \$	768,606.56	\$1,153,835.96	
Gross basic tax .....		\$ 56,006.88	
Credit for estate and inher-			
itance taxes .....		44,805.50	
		<hr/>	
Net basic tax .....			\$ 11,201.38
Total gross taxes (basic and			
additional) .....		\$ 271,827.51	
Gross basic tax .....		56,006.88	
		<hr/>	
Net additional tax .....			215,820.63
			<hr/>
Total net basic and additional taxes.....			\$227,022.01
Defense tax .....			22,702.20
			<hr/>
Total tax payable .....			\$249,724.21
Tax assessed:			
Original, Jan. 1942 List, page 103, line 6....			146,547.05
			<hr/>
Deficiency .....			\$103,177.16

Filed Feb. 9, 1944.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are federal estate taxes; denies the remaining allegations contained in paragraph 3 of the petition.

4. (a) to (f), inclusive. Denies the allegations of error contained in subparagraphs (a) to (f), inclusive, of paragraph 4 of the petition. [15]

5. (a). Admits that among the assets of decedent's estate, as disclosed in said Form 706, under Item 37 of Schedule B thereof, were 425.817 shares of the common stock of A. Hamburger & Sons, Inc., a California corporation; that petitioners returned said stock at \$418,735.66. Admits that the respondent determined a value of \$510,980.40 on said shares of stock, as set forth in the notice of deficiency; denies the remaining allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) Admits that among the assets of decedent's estate, as disclosed in Form 706 under Item 38 of Schedule B thereof, were 104.167 shares of common stock of Hamburger Realty Company, a California corporation; that petitioners returned said stock at \$220,162.16. Admits that the respondent determined a value of \$505,209.95 on said shares of stock, as set forth in the notice of deficiency. Denies the remainder of the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) and (d). Denies the allegations contained in subparagraphs (c) and (d) of paragraph 5 of the petition.

(e) Admits that the respondent did not allow as deductions under "Debts of Decedent", Items 4 to 8, inclusive, and Item 10, under Schedule K, of Form 706; denies the remaining allegations contained in subparagraph (e) of paragraph 5 of the petition. [16]

(f) Denies the allegations contained in subparagraph (f) of paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL, HDT  
Chief Counsel,  
Bureau of Internal  
Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel.  
HAROLD D. THOMAS,  
E. A. TONJES,  
Special Attorneys,  
Bureau of Internal Revenue.

Received and filed March 28, 1944. [17]

[Title of Tax Court and Cause.]

AMENDED PETITION TO CONFORM  
TO PROOF

The above named petitioners hereby file their amended petition to conform to proof, after leave first had and obtained in the above entitled Court, hereby petitioning for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency LA:ET:90D:NAB, dated Dec. 27, 1943, and as a basis for their proceedings allege as follows:

1. That your petitioners are the duly appointed, qualified and acting Executors of the Estate of Belle Alice Hamburger Nathan, deceased, having been so appointed by the Superior Court of the State of California, in and for the County of Los Angeles; their address for mail in this proceeding being 808 Bank of America Building, 650 South Spring Street, Los Angeles 14, California.

2. The notice of deficiency (a copy of which is attached hereto marked Exhibit A) was mailed to petitioners on Dec. 27, 1943.

3. The taxes in controversy are deficiency federal estate taxes in the amount of \$103,177.16, and in addition thereto the sum of [18] \$76,853.19, being overpayment of federal estate taxes on Form 706, or a total controversial tax of \$180,030.35.

4. The determination of said tax set forth in



said notice of deficiency is based upon the following errors:

(a) Respondent erred in determining a value in excess of \$127,745.10 on the 425.817 shares of stock of the A. Hamburger & Sons, Inc., a California corporation, described under Item 37 of Schedule B of Form 706, and under Item 37 on Page 3 of Exhibit A hereto attached.

(b) Respondent erred in determining a value in excess of \$135,417.10 on the 104.167 shares of stock of the Hamburger Realty Company, a California corporation, described under Item 38 of Schedule B of Form 706, and under Item 38 on Page 3 of Exhibit A hereto attached, and erred in failing to accept as the market value thereof the said sum of \$135,417.10 as returned.

(c) Respondent erred in failing to allow as a deduction additional compensation for the Executors, in relation to the administration of the estate and the handling of death tax matters and the prosecution of this appeal a sum over and above the fees heretofore allowed, which said sum will be submitted and is allowable upon recomputation under Rule 50.

(d) Respondent erred in failing to allow as a deduction additional attorneys' fees for services of attorneys employed by the Executors in the matter of protesting the determination of respondent in relation to the federal estate tax,

the preparation of the within petition, and the prosecution of this appeal, a sum over and above the fees heretofore allowed, which said sum will be submitted and is allowable on re-computation under Rule 50. [19]

(e) Respondent erred in failing to allow as a deduction Items 4 to 8, inclusive, and Item 10, under Schedule K of Form 706, and under Debts of Decedent on Page 5 of Exhibit A hereto attached.

(f) Respondent erred in determining a federal estate tax on the estate of said decedent in excess of the sum of \$69,693.86.

5. The facts upon which the petitioners rely as the basis of this proceeding are as follows:

(a) That among the assets of decedent's estate, as disclosed in said Form 706, under Item 37 of Schedule B thereof, were 425.817 shares of the common stock of A. Hamburger & Sons, Inc., a California corporation; that petitioners inadvertently returned said stock at \$418,735.66 or \$1127.00 per share. That said respondent determined a value of \$510,980.40 on said shares of stock or \$1202.16 per share, as indicated by said Exhibit A hereto attached. That the value determined by the respondent is excessive and is not the fair market value of said stock at the basic date. That in truth and in fact the fair market value of the said 425.817 shares of stock on the basic date was not in excess of \$127,745.10, or \$300.00 per share.

(b) That among the assets of decedent's estate, as disclosed in said Form 706, under Item 38 of Schedule B thereof, were 104.167 shares of the common stock of Hamburger Realty Company, a California corporation; that petitioners inadvertently returned said stock at \$220,162.16, or \$2113.55 per share. That said respondent determined a value of \$505,209.95 on said shares of stock, or \$4895.97 per share, as indicated by said Exhibit A hereto attached. That the value determined by the respondent is excessive and is not the fair market value of said stock at the basic date. That the fair market value of said stock on the basic date is the sum of \$135,417.10, [20] or \$1300.00 per share.

(c) That petitioners have incurred, which are unpaid, for services of the Executors of the estate of said decedent, and subjected themselves to liability for additional Executors' fees in relation to matters of the estate, and particularly in relation to protesting and concluding the determination of the federal estate tax presented by this amended petition, in an additional sum to be submitted and allowed upon recomputation under Rule 50.

(d) That petitioners have subjected themselves to the liability for attorneys' fees over and above attorneys' fees heretofore paid or allowed, in relation to the determination of the federal estate tax, the preparation of this petition, and the prosecution to final determination



of the above entitled matter, in an additional sum to be submitted and allowed upon recomputation under Rule 50.

(e) That respondent failed to allow as deductions under "Debts of Decedent", Items 4 to 8, inclusive, and Item 10, under Schedule K of Form 706, which debts were paid by your petitioners; that said debts were contractual liabilities of decedent which were unpaid at the time of her death and were, therefore, liabilities of her estate under the California law. That said debts were allowed to petitioners as charges against said estate in their accounting and Order of the Court.

(f) That petitioners were in error in returning a value on the stock of A. Hamburger & Sons, Inc., in Form 706 in excess of \$127,745.10, and petitioners were in error in returning a value on the stock of Hamburger Realty Company on Form 706 in excess of the sum of \$135,417.10; and petitioners claim refund of the returned [21] tax in the sum of \$76,853.19, with interest thereon as provided by law, all of which said amount was paid by your petitioners within a period of three years prior to the date of the issuance of the statutory notice of deficiency, being Exhibit A attached hereto, and within three years prior to the filing of the within petition herein.

Wherefore, petitioners pray that this Honorable Court may hear this proceeding and reverse the action of the respondent complained of herein and order a refund of the federal estate tax erroneously overpaid in the sum of \$76,853.19, together with interest thereon as provided by law, and order a re-determination of the proposed deficiency.

/s/ CLAUDE I. PARKER,

/s/ RALPH W. SMITH,

/s/ J. EVERETT BLUM,

Counsel for Petitioners.

Of Counsel:

/s/ L. A. LUCE. [22]

State of California,

County of Los Angeles—ss.

P. L. Nathan and Evelyn Hamburger, each being first duly sworn, upon their oath, depose and say:

That they are the duly appointed, qualified, and acting Executors of the Estate of Belle Alice Hamburger Nathan, deceased, and are the petitioners named in the foregoing Amended Petition; that they have read the foregoing Amended Petition or had the same read to them, and are familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to

be upon information and belief and those facts they believe to be true.

/s/ P. L. NATHAN,

/s/ EVELYN HAMBURGER.

Subscribed and sworn to before me this 4th day of October, 1945.

/s/ PEARL ANDERSON,

Notary Public in and for the County of Los Angeles,  
State of California. [23]

### EXHIBIT "A"

Form 1279

SN-IT-7

Office of Internal Revenue, Agent in Charge Los Angeles Division, LA:ET:90D:NAB, Treasury Department, Internal Revenue Service, 417 South Hill Street, Los Angeles 13, California.

Dec. 27, 1943

Estate of Belle Alice Hamburger Nathan,  
P. L. Nathan et al., Executors,  
505 South Windsor Boulevard,  
Los Angeles, California.

Gentlemen:

You are advised that the determination of the estate tax liability of the above-named estate, dis-



closes a deficiency of \$103,177.16 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA: Conf. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

ROBERT E. HANNEGAN,

Commissioner,

By /s/ R. B. SULLIVAN,

Acting Internal Revenue

NAB:vmc

Agent in Charge.

Enclosures:

Statement

Form of Waiver. [24]

LA:ET:90D:NAB. District of Sixth California.  
Estate of Belle Alice Hamburger Nathan. Date  
of death: October 13, 1940.

### Statement

	Liability	Assessed	Deficiency
Estate tax .....	\$249,724.21	\$146,547.05	\$103,177.16

In making this determination of the Federal estate tax liability of the above named estate, careful consideration has been given to the report of examination dated October 21, 1942, to the protest dated December 23, 1942, and to the statements made at the conferences held on February 9, 1943, March 30, 1943 and November 4, 1943.

A copy of this letter and statement has been mailed to your representative, Ralph W. Smith, 808 Bank of America Building, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you.

### Adjustments to Net Estate

Net estate for basic tax as disclosed by return		\$ 708,606.56
Additions to value of net estate and decreases in deductions:		
Stocks and bonds .....	\$379,788.27	
Other miscellaneous prop- erty .....	2,411.10	
Executors' commission.....	6,000.00	
Miscellaneous administration expenses .....	4,028.17	
Debts of decedent .....	1,001.86	393,229.40
		<hr/>
		\$1,101,835.96
Reductions in value of net estate and increases in deductions:		
Attorney's fees .....		8,000
		<hr/>
Net estate for basic tax as adjusted.....		\$1,093,835.96
Net estate for additional tax as adjusted.....		\$1,153,835.96



Explanation of Adjustments

Stocks and bonds :		Return	Determined
Item 1	\$	2,152.50 }	\$ 2,230.63 }
Accrued interest .....		20.16 }	16.03 }
Item 2		563.12 }	557.66 }
Accrued interest .....		5.04 }	4.51 }
Item 3		225.34 }	223.06 }
Interest .....		2.02 }	1.80 }
Item 4		56.31 }	55.76 }
Interest .....		.50 }	.45 }
Item 5		542.60 }	540.63 }
Interest .....		1.46 }	.97 }
Item 6		2,170.40 }	2,162.50 }
Interest .....		5.84 }	3.89 }
Item 7		542.60 }	540.63 }
Interest .....		1.46 }	.97 }
Item 8		2,170.40 }	2,162.50 }
Interest .....		5.84 }	3.89 }
Item 9		542.60 }	540.63 }
Interest .....		1.46 }	.97 }
Item 10		2,170.40 }	2,162.50 }
Interest .....		5.84 }	3.89 }
Item 11		10,000.00 }	10,000.00 }
Interest .....		None }	65.00 }
Item 12		52,890.00 }	52,890.00 }
Interest .....		54.00 }	603.47 }
Item 13		10,578.00 }	10,578.00 }
Interest .....		10.80 }	160.69 }
Item 14		900.96 }	892.25 }
Interest .....		8.08 }	7.21 }
Item 15		35,400.00 }	35,400.00 }
Interest .....		49.80 }	630.42 }
Item 16		35,400.00 }	35,400.00 }
Interest .....		49.80 }	630.42 }
Item 17		23,600.00 }	23,600.00 }
Interest .....		33.20 }	420.28 }
Item 18		1,126.25 }	1,115.31 }
Interest .....		10.00 }	9.01 }
Item 19		563.12 }	557.66 }
Interest .....		5.04 }	4.51 }

Stocks and bonds:		Return	Determined
Item 20	\$	347.86 }	\$ 334.59 }
Interest .....		3.03 }	2.90 }
Item 21		542.60 }	540.63 }
Interest .....		1.46 }	.97 }
Item 22		2,170.40 }	2,162.50 }
Interest .....		5.84 }	3.89 }
Item 23		22,443.60 }	22,456.25 }
Interest .....		70.00 }	46.67 }
Item 24		1,085.20 }	1,081.25 }
Interest .....		2.92 }	1.94 }
Item 25		1,077.80 }	1,080.00 }
Interest .....		9.17 }	8.19 }
Item 26		56.31 }	55.77 }
Interest .....		.50 }	.45 }
Item 27		788.37 }	780.72 }
Interest .....		7.07 }	6.31 }
Item 28		1,126.25 }	1,115.31 }
Interest .....		10.08 }	9.01 }
Item 29		900.96 }	892.25 }
Interest .....		8.08 }	7.21 }
Item 30		1,126.25 }	1,115.31 }
Interest .....		10.08 }	9.01 }
Item 31		2,155.60 }	2,160.00 }
Interest .....		18.34 }	16.39 }
Item 32		5,534.00 }	5,543.75 }
Interest .....		16.00 }	10.69 }
Item 33		2,155.60 }	2,160.00 }
Interest .....		18.34 }	16.39 }
Item 34		5,534.00 }	5,543.75 }
Interest .....		16.00 }	10.69 }
Item 35		5,534.00 }	5,543.75 }
Interest .....		16.00 }	10.69 }
Item 36		11,278.00 }	11,278.00 }
Interest .....		57.29 }	102.43 }
Item 37		418,735.66	510,980.40
Item 38		220,162.16	505,209.95
Totals .....		\$884,889.84	\$1,264,678.11
Increase .....			\$ 379,788.27

The adjustments with respect to items one to thirty-six inclusive are based on the mean between the high and low sales on the New York Stock Exchange. [27]

The value of 425.817 shares of capital stock of A. Hamburger & Sons has been determined as \$510,980.46 in lieu of \$418,735.66 returned.

The value of 104.167 shares of capital stock of Hamburger Realty Co. has been determined at \$505,209.95 in lieu of \$220,162.16 returned.

Other miscellaneous property:

	Return	Determined
Item 3 .....	\$24,957.12	\$27,265.02
Items 324 to 415 inc.....	437.55	426.75
Costume jewelry .....	0.00	25.00
1935 tax refund .....	0.00	89.00
	<hr/>	<hr/>
	\$25,394.67	\$27,805.77
Increase .....		\$ 2,411.10
Executor's commission .....	\$15,000.00	\$ 9,000.00
Miscellaneous administration expenses:		
Item 2 .....	\$ 42.97	None
Item 3 .....	281.39	220.41
Item 4 .....	1,320.56	1,034.92
Item 5 .....	1,115.95	874.12
Item 6 .....	3.85	None
Item 8 .....	70.00	None
Item 9 .....	70.00	None
Item 10 .....	66.07	None
Item 11 .....	65.12	None
Item 12 .....	15.12	None
Item 13 .....	70.00	None
Item 21 .....	1,115.95	None
Item 22 .....	1,320.56	None
Item 23 .....	600.08	None
	<hr/>	<hr/>
Totals .....	\$ 6,157.62	\$ 2,129.45
Decrease .....		\$ 4,028.17

Items 2, 6, 8 to 13 incl., and 21 to 23 incl., covering interest, insurance, taxes, etc., are disallowed inasmuch as the same are for periods beginning subsequent to date of the decedent's death.

Items 3 to 5 inclusive, covering interest items, are recommended for allowance in amounts which had accrued to date of the decedent's death.

Debts of Decedent:

	Return	Determined
Item 4 .....	\$ 26.54	None
Item 5 .....	20.00	None
Item 6 .....	30.39	None
Item 7 .....	30.00	None
Item 8 .....	32.00	None
Item 10 .....	27.10	None
Item 24 .....	23,186.64	\$22,350.81
Totals .....	\$23,352.67	\$22,350.81
Decrease .....		\$ 1,001.86

Items 4 to 8 inclusive and 10, under "Debts of decedent", cover debts which are not proper deductions under the provisions of the Federal estate tax law, decedent having left a husband surviving her with a solvent estate, who, under the law of California, was liable for the same.

Item 24 is allowed in amount of annuity, or present worth value, computed in accordance with Column 2, Table A, Page 30, Estate Tax Regulations as follows:

$$208.331\frac{1}{3} \times 12 \times 8.78052 \times 1.01820 \text{ or } \$22,350.81$$

Attorneys' fees .....	\$22,000.00	\$30,000.00
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## Computation of Estate Tax

	Return	Determined	
Gross estate for			
basic tax .....	\$1,122,437.32	\$1,504,636.69	
Deductions .....	413,830.76	410,800.73	
	<hr/>	<hr/>	
Net estate for			
basic tax .....	\$ 708,606.56	\$1,093,835.96	
Net estate for			
additional tax \$	768,606.56	\$1,153,835.96	
Gross basic tax .....		\$ 56,006.88	
Credit for estate and inheri-			
tance taxes .....		44,805.50	
		<hr/>	
Net basic tax .....			\$ 11,201.38
Total gross taxes (basic and			
additional) .....		\$ 271,827.51	
Gross basic tax .....		56,006.88	
		<hr/>	
Net additional tax .....			215,820.63
			<hr/>
Total net basic and additional taxes.....			\$227,022.01
Defense tax .....			22,702.20
			<hr/>
Total tax payable .....			\$249,724.21
Tax assessed:			
Original, Jan. 1942 List, page 103, line 6....			146,547.05
			<hr/>
Deficiency .....			\$103,177.16

Filed Oct. 5, 1945.

[Title of Tax Court and Cause.]

## ANSWER TO AMENDED PETITION

The Commissioner of Internal Revenue, by its attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the amended petition of the above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the amended petition.

3. Admits that the taxes in controversy are Federal estate taxes; denies the remaining allegations contained in paragraph 3 of the amended petition.

4. (a) to (f), inclusive. Denies the allegations of error contained in subparagraphs (a) to (f), inclusive, of paragraph 4 of the amended petition.

5(a). Admits that among the assets of decedent's estate, as disclosed in said Form 706, under Item 37 of Schedule B thereof, [31] were 425.817 shares of the common stock of A. Hamburger & Sons, Inc., a California corporation; that petitioners returned said stock at \$418,735.66. Admits that the respondent determined a value of \$510,980.40 on said shares of stock, as set forth in the notice of deficiency; denies the remaining allegations contained in subparagraph (a) of paragraph 5 of the amended petition.

(b) Admits that among the assets of decedent's estate, as disclosed in Form 706 under Item 38 of Schedule B thereof, were 104.167 shares of common stock of Hamburger Realty Company, a California corporation; that petitioners returned said stock at \$220,162.16. Admits that the respondent determined a value of \$505,209.95 on said shares of stock, as set forth in the notice of deficiency. Denies the remainder of the allegations contained in subparagraph (b) of paragraph 5 of the amended petition.

(c) and (d). Denies the allegations contained in

subparagraphs (c) and (d) of paragraph 5 of the amended petition.

(e) Admits that the respondent did not allow as deductions under "Debts of Decedent", Items 4 to 6, inclusive, and Item 10, under Schedule K, of Form 706; denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the amended petition.

(f) Denies the allegations contained in subparagraph (f) of paragraph 5 of the amended petition.

6. Denies each and every allegation contained in the amended petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL, ECC  
Chief Counsel,

Bureau of Internal  
Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel.

E. C. CROUTER,

E. A. TONJES,  
Special Attorneys,

Bureau of Internal Revenue.

Filed Oct. 16, 1945. [33]

[Title of Tax Court and Cause.]

MEMORANDUM FINDINGS OF FACT  
AND OPINION

Harlan, Judge:

Petitioners are the duly appointed, qualified and acting executors of the estate of Belle Alice Hamburger Nathan, Deceased, said estate being administered in the Superior Court of the State of California in and for the County of Los Angeles. Their mailing address is 808 Bank of America Building, 650 South Spring Street, Los Angeles 14, California.

This proceeding is brought to redetermine a deficiency in Federal estate tax in the amount of \$103,177.16 and to procure a judgment for \$76,853.19 as alleged overpayment of Federal estate tax.

The question presented requires a decision as to the fair market value of the capital stock of the Hamburger Realty Company and the capital stock of A. Hamburger & Sons, Inc., as of October 13, 1941. [34]

FINDINGS OF FACT

Belle Alice Hamburger Nathan died on October 13, 1940.

Her executors elected to have the assets of her estate valued on the optional date of October 13, 1941.

The petitioners filed a Federal estate tax return on Form 706 with the collector of internal revenue, sixth district of California, and paid the tax provided therein.



Among the assets owned by the decedent at her death were 425.817 shares of the common stock of A. Hamburger & Sons, Inc., and 104.167 shares of the common stock of Hamburger Realty Company.

The petitioners returned the value of decedent's shares in A. Hamburger & Sons, Inc., at \$983.35 per share. The respondent, in his notice of deficiency, valued said shares at \$1200 per share. The petitioners returned the value of the shares of the Hamburger Realty Company at \$2,113.55 per share. The respondent, in his deficiency notice, valued said shares at \$4,850 per share. At the oral hearing the respondent announced that the testimony would not sustain the valuations set forth in the deficiency notice but would sustain a valuation of \$4,000 per share for the Hamburger Realty Company stock. However, in his brief the respondent contends for a valuation of \$3,900 per share for the Hamburger Realty Company stock and \$1,000 per share for the A. Hamburger & Sons, Inc., stock.

Petitioners filed an amended petition in which they claimed the Hamburger Realty Company stock was worth \$1,300 per share and the A. Hamburger & Sons, Inc., stock was worth but \$300 per share and, on this amended valuation, asked for a judgment for overpayment of taxes.

A. Hamburger & Sons, Inc., a California corporation, had issued and outstanding 3,774.183 shares of common stock of a par value of \$1,000 each. [35]

The Hamburger Realty Company, a California corporation had issued and outstanding 1,000 shares of common stock of \$1,000 par value. Neither of these companies had any stock of any other character than the common stock referred to and had issued no bonds.

The stock of the Hamburger Realty Company on the basic date was owned as follows:

- 104.167 shares by petitioners herein;
- 104.167 shares by Evelyn Hamburger;
- 104.167 shares by Jennie H. Marx, or by a trust created by her;
- 291.666 shares by David A. Hamburger Corporation;
- 291.666 shares by David A. Hamburger as Trustee of the Estate of M. A. Hamburger, deceased;
- 104.167 shares by A. Hamburger & Sons, Inc.

The stock of A. Hamburger & Sons, Inc., on the basic date was owned as follows:

- 425.817 shares by petitioners herein;
- 425.817 shares by Evelyn Hamburger;
- 425.817 shares by Jennie H. Marx, or by a Trust created by her;
- 1,248.366 shares by David A. Hamburger Corporation;
- 1,248.366 shares by David A. Hamburger as Trustee of the Estate of M. A. Hamburger, deceased.

All of the parties named in the two paragraphs immediately preceding this paragraph are brothers and sisters.

No shares of stock of Hamburger Realty Company or of A. Hamburger & Sons, Inc. have ever been sold and each of said corporations is a closed family corporation.

On the basic date the president, general and executive manager of said corporations was David A. Hamburger, aged 84 years. The vice-president of said corporations on the basic date was Evelyn Hamburger, aged 72 years. The secretary-treasurer of said corporations was P. L. Nathan, aged 76 years. Jennie H. Marx was 81 years of age on the basic date.

Neither the articles of incorporation of A. Hamburger & Sons, Inc., nor of Hamburger Realty Company provide for cumulative voting of the stock.

The assets, liabilities and net worth of the Hamburger Realty Co. on the basic date hereof and the book value (Col. A) and the fair market value (Col. B) thereof are as follows:

	Column A	Column B
	Book Value	Fair Market Value
Assets:		
A. Cash on hand \$10,720.74 and Accounts Receivable \$145.96 \$	10,866.70	\$ 10,866.70
B. Stocks:		
1. 275 shares Farmers & Merchants National Bank of Los Angeles, Calif. ....	71,234.00	106,700.00
2. 678 shares Security-First National Bank of Los Angeles, California .....	31,477.50	32,967.75



	Column A Book Value	Column B Fair Market Value
3. 140 units Security Company .....	None	4,340.00
4. 10 shares Wells Fargo Bank & Trust Co.....	1,885.00	2,925.00
5. 500 shares Angeles Hospital Association .....	350.00	350.00
6. 13 shares Retail Merchants Credit Ass'n. ....	1,285.00	1,285.00
C. Real Estate:		
1. W. 8th, Broadway & Hill Sts., property under lease to A. Hamburger & Sons, Inc. and May Co. ....	1,185,421.44	4,000,000.00
2. #845 South Broadway property .....	101,107.46	315,600.00
3. 36/144 interest S. W. Cor. 15th & Hill.....	19,164.78	3,000.00
4. 2/10th interest N. E. Cor. 14th Place & Hill	13,205.88	2,000.00
5. 6/30th interest S. E. Cor. 14th & Hill Sts.....	6,880.38	1,400.00
6. 1/2 interest N. E. Cor. 15th & Hill Sts.....	51,433.30	6,000.00
7. Vallejo, Solano County property .....	None	None
8. 1404 South Hill St.....	26,692.26	5,000.00
9. 149 W. 14th Place.....	39,937.31	6,000.00
10. 1318/22 South Hill St.	74,111.35	5,800.00
11. S. W. Cor. 15th & Hill Sts. ....	60,398.50	6,000.00
12. Temple Street property	10,589.35	3,500.00
13. 14th Place & S. Broadway .....	26,622.61	3,500.00
14. S. E. Cor. 10th & Main Streets .....	200,006.40	30,000.00
15. S. E. Cor. Ezra St. & Pico Blvd. ....	2,468.82	500.00
16. W. 15th btn. Hill & Olive Sts. ....	5,228.32	3,000.00



	Column A Book Value	Column B Fair Market Value
D. Office Furniture & Fixtures..	None	100.00
E. Prepaid taxes and insurance	6,547.82	6,547.80
F. Sales Contract—Leroy Joseph	250.00	250.00
<hr/>		
Total Assets .....	\$1,947,164.18	\$4,557,632.27
Liabilities:		
A. Accounts Payable .....	\$ 6,391.90	\$ 6,391.90
B. Federal income and excess profits taxes .....	70,116.03	70,116.03
C. Note due A. Hamburger & Sons, Inc. ....	548,220.70	548,220.70
D. Lease rental deposits from lessees .....	5,750.00	5,750.00
<hr/>		
Total Liabilities .....	\$ 630,478.63	\$ 630,478.63
Net Worth .....	\$1,316,685.45	\$3,927,153.64
<hr/> <hr/>		

The profit and loss statements of Hamburger Realty Company for the years beginning 1936 to and including the year 1943 are as follows:

Year			
1936	Receipts .....	\$282,839.06	
	Expenses .....	85,805.39	
		<hr/>	
		197,033.67	
	Federal Income Tax.....	27,936.41	\$169,097.26
<hr/>			
1937	Receipts .....	\$285,569.43	
	Expenses .....	80,345.72	
		<hr/>	
		205,223.71	
	Federal Income Tax.....	28,709.47	\$176,514.24
<hr/>			
1938	Receipts .....	\$291,041.44	
	Expenses .....	82,874.28	
		<hr/>	
		208,167.16	
	Federal Income Tax.....	33,629.85	\$174,537.31

Year			
1939	Receipts .....	\$293,643.30	
	Expenses .....	80,615.30	
		<hr/>	
		213,028.00	
	Federal Income Tax.....	34,694.30	\$178,333.70
		<hr/>	
1940	Receipts .....	\$272,540.06	
	Expenses .....	77,613.33	
		<hr/>	
		194,926.73	
	Federal Income Tax.....	45,319.37	\$149,607.36
		<hr/>	
1941	Receipts .....	\$294,825.72	
	Expenses .....	73,272.94	
		<hr/>	
		221,552.78	
	Federal Income Tax.....	70,116.03	\$151,436.75
		<hr/>	
1942	Receipts .....	\$293,138.32	
	Expenses .....	73,447.84	
		<hr/>	
		219,690.48	
	Federal Income Tax.....	92,035.28	\$127,655.20
		<hr/>	
1943	Receipts .....	\$340,321.88	
	Expenses .....	93,711.28	
		<hr/>	
		246,610.60	
	Federal Income Tax.....	116,529.99	\$130,080.61
		<hr/>	

Dividends paid by Hamburger Realty Company for years beginning 1936 to and including the year 1943 are as follows:

Year		
1936—	January 6 .....	\$183,082.14
1937—	January 7 .....	171,769.75
1938—	January 7 .....	176,514.24
	February 17 .....	1,091.32
1939—	February 7 .....	174,537.31
	December 13 .....	9,571.18

1940—February 8 .....	176,260.91
March 7 .....	2,072.79
1941—January 15 .....	149,607.36
1942—March 12 .....	151,436.75
1943—March 15 .....	129,160.76

The assets, liabilities, and net worth of the A. Hamburger & Sons, Inc., on the basic date hereof and the book value (Column A) and the fair market value (Column B) thereof are as follows:

	Column A	Column B
	Book Value	Fair Market Value
Assets:		
A. Cash on hand and in banks	\$113,706.56	\$113,706.56
B. U. S. Treasury Bonds & Certificates:		
1. \$141,500 P. V. Series		
1945-7 2¾% .....	139,139.06 }	152,245.15 }
Interest .....	1,134.95 }	302.67 }
2. \$100 P. V. Series		
1955-60 27/8% .....	98.50 }	111.41 }
Interest .....	.84 }	.22 }
3. \$122,000 P. V. Series		
1955-60 27/8% .....	120,633.84 }	135,915.63 }
Interest .....	730.73 }	272.79 }
4. \$126,150 P. V. Series		
1943-45 3¼% .....	124,272.81 }	133,324.78 }
Interest .....	854.15 }	2,027.10 }
5. \$84,100 P. V. Series		
1944-46 3¼% .....	82,841.87 }	89,776.75 }
Interest .....	569.43 }	1,351.40 }
6. \$100 P. V. Series		
1944-46 3¼% .....	100.00 }	106.75 }
Interest .....	.68 }	1.61 }
7. \$150,000 P. V. Series		
1947-52 4¼% .....	168,187.50 }	177,000.00 }
Interest .....	1,436.54 }	3,152.10 }
C. Notes Receivable of S. W.		
Levenson .....	1,500.00 }	1,500.00 }
Interest .....	11.25 }	None }

	Column A Book Value	Column B Fair Market Value
D. Mortgages & Trust Deeds:		
1. Estate of Bella A. H.		
Nathan .....	\$ 55,797.61 }	\$ 55,797.61 }
Interest .....	None }	None }
2. Armenian Gethsemane		
Church .....	3,000.00 }	3,000.00 }
Interest .....	52.50 }	20.00 }
E. Bonds:		
1. \$100,000 P. V. L. A.		
City High School Dis-		
trict 4¾% 3/1 and		
9/1 .....	103,815.22 }	103,815.22 }
Interest .....	1,583.33 }	554.10 }
2. \$3,100 P. V. Calif.		
Country Club 7% 5/1		
and 11/1 .....	3,050.00 }	3,050.00 }
Interest .....	None }	None }
F. Stocks:		
1. 20 shares American		
Tel. & Tel. ....	2,105.00	3,057.50
2. 1,167 shares Texas		
Corporation .....	35,933.88	47,409.38
3. 1,505 shares Union Oil		
Co. of Calif. ....	25,812.50	22,575.00
4. 400 shares Inglewood		
Park Cemetery .....	16,000.00	30,000.00
5. 1,000 shares Standard		
Oil Co. of Calif. ....	41,375.00	23,000.00
G. Real Estate:		
1. 955 S. Alvarado, Aca-		
cia Arms .....	44,798.22	30,000.00
2. 421 East 7th Street,		
Stadler Hotel .....	81,520.78	65,000.00
3. 5320 Olympic Blvd.,		
Meadowbrook Apts. ..	55,345.66	25,000.00
4. 3123-9 Sunset Blvd.,		
Westerly Terrace .....	33,175.20	17,500.00
5. 420 N. Coronado		
Street .....	20,644.63	15,000.00



G. Real Estate—(Continued) :	Column A	Column B
	Book Value	Fair Market Value
6. 440 N. Coronado Street .....	\$20,111.59	\$15,000.00
7. 2311 Nottingham Street .....	23,959.68	16,500.00
8. 1034-40 W. Temple Street .....	15,695.49	13,500.00
9. N. E. Cor. Santa Monica & Serrano.....	51,636.53	25,000.00
10. 21 Avenue 26, Venice, California .....	3,703.76	2,500.00
11. 4500/10 Santa Monica Blvd. ....	30,005.61	15,000.00
12. 901 Exposition Blvd.	30,902.37	27,500.00
13. 932 S. Mariposa Street	20,313.74	15,000.00
14. 2418/22 Brooklyn Street .....	20,655.87	18,750.00
15. S. E. Cor. 90th & Broadway .....	10,502.04	9,500.00
16. Cor. Jefferson & Grand, Warehouse ....	179,675.79	300,000.00
17. 2165/9 West Wash- ington St. ....	25,461.25	15,000.00
18. 423 S. Western Ave- nue .....	53,254.60	18,000.00
19. 5425 Santa Monica Blvd. Flomar Apts....	63,261.33	50,000.00
20. 1627 Ingraham St....	32,639.24	25,000.00
21. 3800 S. Vermont Ave- nue .....	52,443.06	43,500.00
22. 1245 W. 49th Street....	3,891.05	2,750.00
23. S. E. Cor. Clinton & Madison Streets .....	19,589.78	5,000.00
24. Lot 12 and part Lot 5, Sec. 18 Twp. 2, R. 2, W., Riverside County (8,059/10,000ths In- terest) .....	1,227.29	500.00
25. 8/30th interest 1402 S. Hill Street .....	15,099.43	1,850.00

## G. Real Estate—(Continued):

	Column A Book Value	Column B Fair Market Value
26. 2/10th interest N. E. Cor. 14th Place and Hill St. ....	\$ 11,113.71	\$ 2,000.00
27. 5/144th interest S. W. Cor. 15th and Hill Sts. ....	3,022.72	425.00
28. 1/2 interest N. E. Cor. 15th & Hills Sts.....	48,318.71	6,000.00
29. 1235 S. Hill Street....	47,933.87	6,400.00
H. 104.167 shares Hamburger Realty Co. ....	382,525.73	406,251.30*

## I. Due from affiliated corporations:

1. David A. Hamburger Corporation at 2% (1/1/38) .....	560,000.00	420,000.00 } 1,026.76 }
Interest .....	6,096.49	
2. David A. Hamburger Corporation at 2% (12/13/39) .....	12,000.00	12,000.00 } .80.00 }
Interest .....	259.00	
3. Hamburger Realty Co. 2% (12/31/40) .....	548,220.70	548,220.70 } None
Interest .....	None	
4. David A. Hamburger Corporation—open ac- count .....	161,299.29	161,299.29

## J. Due from Officers and Stockholders:

1. Evelyn Hamburger \$74,052.60 & \$3,988.64	102,725.44	78,041.24
2. Estate of Belle A. H. Nathan \$49,520.89 and \$11,209.29 .....	77,237.14	60,730.18
3. Jennie H. Marx— \$113,174.55 .....	150,899.40	113,174.55
4. Estate of M. A. Ham- burger—\$409,186.14 ..	409,186.14	409,186.14 } 2,341.36 }
Interest .....	1,977.70	

	Column A Book Value	Column B Fair Market Value
K. Open Accounts—Stockholders:		
1. Evelyn Hamburger....	\$94,972.06	\$94,972.06
2. Jennie H. Marx.....	94,502.53	94,502.53
3. Estate of M. A. Ham- burger .....	87,504.20	87,504.20
4. Estate of Belle A. H. Nathan .....	45,560.83	45,560.83
L. Prepaid taxes, prepaid in- surance and prepaid rent commissions .....	11,744.01	11,744.01
Total Assets .....	<u>\$4,810,357.31</u>	<u>\$4,436,883.88</u>
Liabilities:		
A. Current Liabilities .....	\$ 444,244.98	\$ 444,244.98
B. Federal Income and Excess Profits Taxes .....	96,489.07	96,489.07
C. Lease rental deposits from lessees .....	14,382.50	14,382.50
Total Liabilities ....	<u>\$ 555,116.55</u>	<u>\$ 555,116.55</u>
Net Worth .....	<u><u>\$4,255,240.76</u></u>	<u><u>\$3,881,767.33</u></u>

\*This amount, by agreement, is inserted after a finding by the Court. In the original as submitted this amount was left vacant.

Under the terms of the lease between A. Hamburger & Sons, Inc. and The May Department Stores Co. dated March 30, 1923, A. Hamburger & Sons, Inc. was entitled to receive, during the period commencing November 1, 1941 and ended December 31, 1942, the sum of \$604,078.16 and during this same period A. Hamburger & Sons, Inc. was obligated to pay to the Hamburger Realty Co. as rental for the same property the sum of \$291,666.66. The

excess of the amount that A. Hamburger & Sons, Inc. was entitled to receive from The May Department Stores Company over and above the amount A. Hamburger & Sons was required to pay to the Hamburger Realty Co. during the period commencing November 1, 1941 and ended December 31, 1942, was \$312,411.49 which, when discounted at 6% (.9433) to the date of receipt, had a value at October 13, 1941 of \$294,697.77 and, when discounted at 7% to the date of receipt, had a value at October 13, 1941 of \$279,218.75. This sum is not, nor is any portion thereof, carried as an asset, and is not reflected in the above Balance Sheet.

The profit and loss statements of A. Hamburger & Sons, Inc. for the year beginning 1936 to and including the year 1943 are as follows:

Year			
1936	Receipts .....	\$397,685.74	
	Expenses .....	59,928.64	
		<hr/>	
		337,757.10	
	Federal Income Tax.....	41,360.14	\$296,396.96
		<hr/>	
1937	Receipts .....	\$445,422.81	
	Expenses .....	66,986.65	
		<hr/>	
		378,436.16	
	Federal Income Tax.....	44,051.15	\$334,385.01
		<hr/>	
1938	Receipts .....	\$416,682.57	
	Expenses .....	60,718.16	
		<hr/>	
		355,964.41	
	Federal Income Tax.....	50,694.87	\$305,269.54



Year			
1939	Receipts .....	\$416,551.04	
	Expenses .....	62,180.38	
		<hr/> 354,370.66	
	Federal Income Tax.....	50,511.86	\$303,858.80
1940	Receipts .....	\$406,941.05	
	Expenses .....	60,936.33	
		<hr/> 346,004.72	
	Federal Income Tax.....	71,493.34	\$274,511.38
1941	Receipts .....	\$410,128.89	
	Expenses .....	62,116.66	
		<hr/> 348,012.23	
	Federal Income Tax.....	96,489.07	\$251,523.16
1942	Receipts .....	\$417,465.74	
	Expenses .....	60,998.51	
		<hr/> 356,467.23	
	Federal Income Tax.....	135,911.53	\$220,555.70
1943	Receipts .....	\$154,476.52	
	Expenses .....	53,730.81	
		<hr/> 100,745.71	
	Federal Income Tax.....	26,108.48	\$ 74,637.23

Dividends paid by A. Hamburger & Sons, Inc. for years beginning 1936 to and including the year 1943 are as follows:

Year		
1936	March 24 .....	\$295,912.43
1937	January 7 .....	262,478.08
	January 27 .....	50,734.00
	December 29 .....	6,350.00
1938	January 7 .....	276,997.91
	February 17 .....	41,615.44

Year		
1939	February 7 .....	\$305,269.54
1940	February 8 .....	300,579.11
	March 7 .....	3,946.97
1941	January 15 .....	274,511.38
1942	March 12 .....	251,523.16
1943	March 15 .....	222,687.57

On the 30th day of March, 1923, there was in existence a lease from the Hamburger Realty Company to A. Hamburger & Sons, Inc., for the property situated at Broadway, Eighth, and Hill Streets, Los Angeles, California, which lease terminated on December 31, 1942, and which lease provided for an annual rental of \$250,000 payable by the said A. Hamburger & Sons, Inc. to Hamburger Realty Company.

On the 30th day of March, 1923, A. Hamburger & Sons, Inc., subleased the property situated at Broadway, Eighth and Hill Streets, Los Angeles, California, to The May Department Stores Company for a term of twenty years, terminating December 31, 1942, for a total rental of \$10,355,625.60 payable \$43,148.44 per month.

On the 30th day of March, 1923, Hamburger Realty Company leased the property situated at Broadway, Eighth and Hill Streets, Los Angeles, California, to The May Department Stores Company for a term of thirty years commencing January 1, 1943, and terminating December 31, 1972, for a total rental of \$9,000,000, payable \$25,000 per month beginning January 1, 1943.

The May Department Stores Company is a reputable department store organization in good stand-

ing and a purchaser or owner of the shares of stock here in issue would not have been unduly alarmed as to the receipt of the rentals provided for.

The leases referred to in the findings did not provide for the lessee carrying full coverage insurance against such hazards as fire, lightning, explosion, flood and water, earthquake, and other like hazards, for the protection of the lessors, and the cost of such full coverage insurance would have been \$10,487.38 for the first 45 years of said leases and \$20,395.78 for the last five years of said leases.

For several years prior to the basic date the said David A. Hamburger, president, general and executive manager of Hamburger Realty Company and A. Hamburger & Sons, Inc., had been ill and almost continuously confined to his bed.

On or about the basic date and for some time prior thereto P. L. Nathan, secretary-treasurer of Hamburger Realty Company and A. Hamburger & Sons, Inc., was and had been in poor physical condition and showing signs of senility.

Neither Evelyn Hamburger nor Jennie H. Marx prior to the basic date had any business experience.

The children of David A. Hamburger are Catherine F. Hamburger, Florence H. Becker, Arthur Hamburger, and Howard Hamburger.

None of the said children of David A. Hamburger has had any experience in business and, except possibly for one of the daughters, had never held any position in either Hamburger Realty Company or A. Hamburger & Sons, Inc.



The management on the basic date had not trained or attempted to train any younger people to take over the management or operation of either Hamburger Realty Company or A. Hamburger & Sons, Inc.

For many years prior to and subsequent to the basic date there was severe inharmonious relations existing between the stockholders and directors of Hamburger Realty Company and A. Hamburger & Sons, Inc.; David A. Hamburger did not speak to P. L. Nathan or Evelyn Hamburger or Jennie Marx and the latter three did not speak to David A. Hamburger; each of said persons had his or her own separate attorney advising him or her in connection with the affairs of said corporations.

The inharmonious relations referred to seriously affected adversely the formation of any business or financial or investment policy of either corporation, to the end that such policies remained in status quo and stagnated.

The shares of stock of each of said corporations on the basic date were not attractive to banks as security for a loan.

The stockholders regularly each year, pursuant to an agreement, anticipated the earnings of the A. Hamburger & Sons, Inc., for the year and borrowed all of the earnings during such current year, leaving no earnings in the business for corporate operations.

The stockholder members of the Hamburger family, by reason of being stockholders, had other advantages, such as borrowing money at a low rate



of interest and from sources through the corporation, whereas, they could not have borrowed it from other sources on the same collateral. This advantage would not necessarily [45] have been available to the purchaser of the minority interests in the corporations here involved.

The fair market value of the property located at Broadway, Eighth and Hill Streets, Los Angeles, California, and subject to the leases from Hamburger Realty Company to The May Department Stores Company was arrived at by giving effect to said lease and the lease rentals discounted on a seven per cent basis and adding the residual value of the said property.

On the basic date 131 shares of the common stock of A. Hamburger & Sons, Inc., owned by decedent herein at the time of her death, was pledged to said corporation to secure an indebtedness of \$85,817.14 owing by the decedent to said corporation and evidenced by two promissory notes, one in the amount of \$66,027.85 and one in the amount of \$19,789.29, said notes bearing date of January 1, 1938, and being renewal notes of earlier dated notes.

The fair market value of the 104.167 shares of common stock of the Hamburger Realty Company on October 13, 1941, was \$3,900 per share. The fair market value of the 425.817 shares of the common stock of A. Hamburger & Sons, Inc., on October 13, 1941, was \$1,000 per share.

The parties have agreed to compute by further negotiations the amount of additional compensation for the executors and attorneys.

## OPINION

Petitioners contend that the value of the stocks of these two corporations must be determined by taking into account the earnings of the corporation, the dividends paid and payable, marketability of the stock, the net worth of the company, the condition of the management of the company, a comparison of these stocks with other similar securities, market trends, conditions and restrictions affecting said stocks, the position of minority interests in said corporation and other similar [46] facts. At the hearing they introduced the testimony of two experts who gave their opinions as to the value of these stocks after being presented with hypothetical questions in which all of the above factors were included. Petitioners rest their case largely on the opinion of these experts. They also take the position that the fair market value of the stocks in this case is controlled by the rule expounded by many decisions and set forth in Section 81.10 of Treasury Regulations 105:

The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell.

The respondent contends that when all of the peculiar facts in this case are considered, all elements which would ordinarily be weighed in arriving at the value of the stock, except the earnings of the corporation and the appraised value of their tangible assets, are of little use. In resolving these

two positions certain basic facts impress us as controlling. Both of these corporations are strictly family concerns. All of the stockholders on the basic date, October 13, 1941, were brothers and sisters. No stock of either corporation had ever been sold outside the family. 96½ per cent of the assets of the Hamburger Realty Company was real estate, and for some time prior to October 13, 1941, this corporation had been a dormant body whose operations consisted almost wholly of collecting rents and looking after the upkeep of improved and unimproved real estate. For many years past A. Hamburger & Sons, Inc., had been operating apparently on the basis of advancing the private economic welfare of its stockholders and officers rather than attempting to increase its own earning capacity. The balance sheet of this corporation shows that it had made 2 per cent loans to corporations in which members of the Hamburger family were interested, in the face amount of \$1,120,000. It had made loans secured either by mortgages or liens on stock to stockholders in the approximate amount of \$800,000. Some of the notes involved in these loans are [47] exhibits in this case and the final due date is 30 years after the date of the note. The repayment of the note is by installment payments and no interest at all is required, except on overdue installments. The balance sheet also shows "open accounts" to stockholders in the gross amount of \$384,000 and nothing is said about any interest on these accounts. Since no interest is charged on the loans secured by notes except in case of default it is not to be



presumed in the absence of testimony that any interest is charged on these open accounts. During the years 1940 and 1941 there were ample bonds on the market returning 4 per cent interest and extremely high security. In fact, the balance sheet of the A. Hamburger & Sons, Inc., shows that they had some of these securities in their portfolio and if these corporations had been normally interested in the production of dividends for their stockholders, rather than in advancing the private economic welfare of their stockholders, a return of 4 per cent on all of these various loans could easily have been obtained which would have added \$69,000 to the income of A. Hamburger & Sons, Inc., for the year 1941. Allowing for tax deductions, this would have approximated a dividend source of \$50,000 more than was actually received. Under these circumstances it is obvious that little help can be received from considering the dividends paid record of these corporations for the reason that their dividend paying system was entirely abnormal. Thus, we have two corporations with no record of stock sales, a method of business operation unlike any normal corporation, and a system of paying dividends to stockholders whereby the stockholders profited more from receiving the use of the assets of the corporation to their own individual profit than they would have profited by receiving normal dividends. Under such conditions we do not feel that any system of evaluating this stock which would apply to a normal corporation would be useful here. [48]



The difficulty of arriving at a valuation is shown by the fact that both the petitioner and the respondent in this case have contended for two different sets of valuations at different times in this proceeding. In addition to these four values the balance sheet of the A. Hamburger & Sons, Inc., gives us a fifth book value for the stock of the Hamburger Realty Company. Petitioner, in his brief, chides the respondent for not having produced a "willing buyer" who would purchase this stock at the price for which the respondent contends. It might well then be asked of the petitioners as to why they did not, out of the turmoil of the Hamburger relatives, produce at least one member of the family who would be a "willing seller" to sell his stock at the price contended for by petitioner. It would, of course, be unusual to find a stockholder such as those of the Hamburger Realty Company whose stock was held by A. Hamburger & Sons, Inc., at a book value of \$3,672.23 a share who would be willing to sell such stock at \$1,660.89, but if the stockholders of the Hamburger Realty Company in truth and fact believe what their experts and attorneys contend in this case they surely would consider such a sacrifice price a very advantageous sale.

The question in this case is not new. The Board of Tax Appeals in *Melville Hanscom*, 24 B. T. A. 173 at page 173, says, "The capital stock of the Eliot Realty Company was closely held by members of the decedent's family and no sales thereof were ever made to the public. Under such circumstances the value of the stock is determined on the basis of

the assets underlying the capital stock, and the earnings of the corporation.”

Since, in the case at bar, by agreement, the parties have placed the value of the building of the May Department Store, which constitutes 8/9ths of the assets of Hamburger Realty Co., at a fixed capitalization of the existing income and since the management of A. Hamburger & Sons, Inc., have intentionally created a falsely low income by enriching themselves and the other stockholders through interest-free [49] loans, it is held that the incomes of these companies have already received all of the consideration possible in arriving at the valuation of the stock and that for existing purposes the fair market value of the assets is the only remaining available factor that can be intelligently used in arriving at this valuation.

In the case of Estate of Henry E. Huntington, Deceased, 36 B. T. A. 698, the Board had before it a closely held corporation in which there was no record of open sales and it said, on page 714, “The fair market value on May 23, 1927, of the 1,000 outstanding shares of stock of the Huntington Co. was equivalent to the fair market value of its net assets, to wit, \$16,110,985.49 or \$16,110.98549 per share.”

In the case of Bank of California v. Commissioner, 133 Fed. (2d) 428, the court approved the findings of the Board of Tax Appeals in a case where the issue was the valuation for estate tax purposes of stock in a closely held corporation in which there had been no sales. On page 430 the

court says, "The Board found that at the time of decedent's death Oakburn stock (7,700 shares) had a fair market value equal to Oakburn's net worth."

On the basis of the above precedents we would be inclined to find a somewhat larger valuation than is contended for by the respondent. However, since the respondent asks for a valuation of \$3,900 a share for the stock of the A. Hamburger & Sons, Inc., and for a value of \$1,000 a share for the Hamburger Realty Company, we will approve that valuation.

In arriving at this determination we have weighed and accepted the preponderance of the evidence as we have seen it. We have not relied upon any presumption that the original determination of the Commissioner in his notice of deficiency was correct.

Decision will be entered under Rule 50.

Entered July 17, 1946.

[Seal] [50]

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[Title of Tax Court and Cause.]

### ORDER

Good cause appearing therefore it is

Ordered that the next to the last paragraph on page 17 of the memorandum findings of fact and opinion entered July 17, 1946, reading as follows:

"On the basis of the above precedents we would be inclined to find a somewhat larger valuation than is contended for by the respond-



ent. However, since the respondent asks for a valuation of \$3,900 a share for the stock of the A. Hamburger & Sons, Inc., and for a value of \$1,000 a share for the Hamburger Realty Company, we will approve that valuation."

be and the same is hereby stricken and that the following paragraph be substituted in lieu thereof:

On the basis of the above precedents we would be inclined to find a somewhat larger valuation than is contended for by the respondent. However, since the respondent asks for a valuation of \$3,900 a share for the stock of the Hamburger Realty Company and for a value of \$1,000 a share for the stock of A. Hamburger & Sons, Inc., we will approve that valuation.

Entered July 22, 1946.

[Seal]      /s/ BYRON B. HARLAN,  
Judge. [51]

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[Title of Tax Court and Cause.]

### MOTION FOR REHEARING

Come now the petitioners above named, by their attorneys of record, and move this Honorable Court for its order, ordering a rehearing of the above entitled proceedings. This motion is based upon the following grounds:

1. That the cases of *Estate of Henry E. Huntington, Deceased*, 36 B.T.A. 698, and *Bank of America v. Commissioner*, 133 Fed. (2d) 428, relied on as authority by the Honorable Judge



who rendered the Opinion in the above entitled matter for his conclusions, are not in point in the instant matter, as more fully appears in Petitioners' Points and Authorities attached to Petitioners' Motion for Review by the Full Court, concurrently filed herewith.

2. That although the Honorable Judge who rendered the Opinion in the above entitled matter states that all factors of valuation were considered, it appears affirmatively from the opinion that the said Honorable Judge based his conclusions as to the value of the shares of stock involved in the instant [52] matter solely on the value of the assets owned by the corporations.

3. That the opinion in the instant matter was rendered by a judge of the above entitled Court other than the Honorable Judge who presided at the trial of the above entitled matter.

4. That the Opinion rendered in the instant matter is contrary to this Honorable Court's opinions in an unbroken line of analagous cases.

5. That the Opinion rendered in the instant matter is contrary to law.

6. That the Opinion rendered in the instant matter is contrary to, and not supported by the evidence.

That this motion will be based on the opinion rendered in the above entitled matter, the stipulations of facts filed in the above entitled matter, the official report of proceedings filed in the above en-

titled matter, the briefs heretofore submitted in the above entitled matter, the amended petition to conform to proof filed in the above entitled matter, the points and authorities attached to petitioners' motion for review by the full Court.

Wherefore, petitioners pray that this motion be set down for hearing by the above entitled Court, that notice of hearing be given as provided by law and the rules of this Honorable Court, and that upon such hearing this Honorable Court shall order a rehearing of the above entitled proceedings, and upon such rehearing the opinion heretofore entered on July 17, 1946, be vacated and withdrawn [53] and a new Opinion made and entered.

Dated this 12th day of August, 1946.

/s/ CLAUDE I. PARKER,

/s/ RALPH W. SMITH,

/s/ J. EVERETT BLUM,

/s/ L. A. LUCE,

Counsel for Petitioners.

Filed Aug. 15, 1946.

[Endorsed]: Denied. [54]

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[Title of Tax Court and Cause.]

### MOTION FOR RECONSIDERATION

Come now the petitioners above named, by their attorneys of record, and move this Honorable Court for its order, ordering a reconsideration of the above entitled proceedings. This motion is based upon the following grounds:

1. That the cases of Estate of Henry E. Huntington, Deceased, 36 B.T.A. 698, and Bank of America v. Commissioner, 133 Fed. (2d) 428, relied on as authority by the Honorable Judge who rendered the Opinion in the above entitled matter for his conclusions, are not in point in the instant matter, as more fully appears in Petitioners' Points and Authorities attached to Petitioners' Motion for Review by the Full Court, concurrently filed herewith.

2. That although the Honorable Judge who rendered the Opinion in the above entitled matter states that all factors of valuation were considered, it appears affirmatively from the opinion that the said Honorable Judge based his conclusions as to the value of the shares of stock involved in the instant [55] matter solely on the value of the assets owned by the corporations.

3. That the opinion in the instant matter was rendered by a judge of the above entitled Court other than the Honorable Judge who presided at the trial of the above entitled matter.

4. That the Opinion rendered in the instant matter is contrary to this Honorable Court's opinions in an unbroken line of analagous cases.

5. That the Opinion rendered in the instant matter is contrary to law.

6. That the Opinion rendered in the instant matter is contrary to, and not supported by the evidence.



That this motion will be based on the opinion rendered in the above entitled matter, the stipulations of facts filed in the above entitled matter, the official report of proceedings filed in the above entitled matter, the briefs heretofore submitted in the above entitled matter, the amended petition to conform to proof filed in the above entitled matter, the points and authorities attached to petitioners' motion for review by the full Court.

Wherefore, petitioners pray that this motion be set down for hearing by the above entitled Court, that notice of hearing be given as provided by law and the rules of this Honorable Court, and that upon such hearing this Honorable Court shall order a rehearing and reconsideration of the above entitled proceedings, and upon such rehearing and reconsideration the opinion heretofore entered on July 17, 1946, be vacated and withdrawn [56] and a new Opinion made and entered.

Dated this 12th day of August, 1946.

/s/ CLAUDE I. PARKER,

/s/ RALPH W. SMITH,

/s/ J. EVERETT BLUM,

/s/ L. A. LUCE,

Counsel for Petitioners.

Filed Aug. 15, 1946.

[Endorsed]: Denied Aug. 19, 1946. [57]



[Title of Tax Court and Cause.]

MOTION FOR REVIEW BY THE FULL  
COURT OF THE OPINION ENTERED IN  
THE ABOVE ENTITLED MATTER ON  
JULY 17, 1946.

Come now the petitioners above named, by their attorneys of record, and move this Honorable Court for its order, ordering a review by the full Court of the opinion heretofore entered in the above entitled matter on July 17, 1946. This motion is based upon the following grounds:

1. That the cases of *Estate of Henry E. Huntington, Deceased*, 36 B.T.A. 698, and *Bank of America v. Commissioner*, 133 Fed. (2d) 428, relied on as authority by the Honorable Judge who rendered the Opinion in the above entitled matter for his conclusions, are not in point in the instant matter, as more fully appears in *Petitioners' Points and Authorities* hereto attached.

2. That although the Honorable Judge who rendered the Opinion in the above entitled matter states that all factors of valuation were considered, it appears affirmatively from the opinion that the said Honorable Judge based his conclusions as to the value of the shares of stock involved in the instant [58] matter solely on the value of the assets owned by the corporation.

3. That the opinion in the instant matter was rendered by a judge of the above entitled Court other than the Honorable Judge who presided at the trial of the above entitled matter.

4. That the Opinion rendered in the instant matter is contrary to this Honorable Court's opinions in an unbroken line of analagous cases.

5. That the Opinion rendered in the instant matter is contrary to law.

6. That the Opinion rendered in the instant matter is contrary to, and not supported by, the evidence.

That this motion will be based on the opinion rendered in the above entitled matter, the stipulations of facts filed in the above entitled matter, the official report of proceedings filed in the above entitled matter, the briefs heretofore submitted in the above entitled matter, the amended petition to conform to proof filed in the above entitled matter, the points and authorities hereto attached and filed concurrently herewith, and the record heretofore made and filed in the above entitled matter, and this Motion.

Wherefore, petitioners pray that this motion be set down for hearing by the above entitled Court, that notice of hearing be given as provided by law and the rules of this Honorable Court, and that upon such hearing this Honorable Court shall order the [59] opinion heretofore entered on July 17, 1946, be reviewed by the full Court, and upon such

review be vacated and withdrawn and a new opinion made and entered.

Dated this 12th day of August, 1946.

Respectfully submitted,

/s/ CLAUDE I. PARKER,

/s/ RALPH W. SMITH,

/s/ J. EVERETT BLUM,

/s/ L. A. LUCE,

Counsel for Petitioners.

Filed Aug. 15, 1946.

[Endorsed]: Denied Aug. 20, 1946.

/s/ J. E. MURDOCK,

Acting Presiding Judge. [60]

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The Tax Court of the United States  
Washington

Docket No. 3992

ESTATE OF BELLE ALICE HAMBURGER  
NATHAN, P. L. NATHAN, et al., Executors,  
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### DECISION

Pursuant to the Court's Memorandum Findings of Fact and Opinion, entered July 17, 1946, and

Order dated July 22, 1946, the respondent herein having on December 4, 1946, filed a computation of tax, and the petitioner having on December 23, 1946, filed an acquiescence in said computation, it is

Ordered and Decided: That there is a deficiency in estate tax in the amount of \$47,543.61.

[Seal]      /s/ BYRON B. HARLAN,  
Judge.

Entered Dec. 31, 1946. [61]

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Before The Tax Court of the United States

Docket No. 3992

In the Matter of  
ESTATE OF BELLE ALICE HAMBURGER  
NATHAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Room 324, Post Office and Federal Building  
Spring, Temple and Main Streets  
Los Angeles, California  
October 4, 1945, 9:30 a.m.  
(Met Pursuant to Notice)

Before: Honorable Arthur J. Mellott, Judge.

Appearances:

Ralph W. Smith, Esq., 1010 Bank of America  
Building, Los Angeles, California, and



J. Everett Blum, Esq., 810 South Spring Street, Los Angeles, California, appearing on behalf of Estate of Belle Alice Hamburger Nathan, Petitioner.

E. A. Tonjes, Esq. (Honorable J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue), appearing on behalf of the Commissioner of Internal Revenue, Respondent. [64]

### PROCEEDINGS

The Clerk: Docket No. 3992. Estate of Belle Alice Hamburger Nathan.

The Court: State your appearances, please, for the record, gentlemen.

Mr. Smith: Ralph W. Smith and J. Everett Blum.

The Court: For the respondent?

Mr. Tonjes: E. A. Tonjes.

The Court: You may state your case for the petitioner.

Mr. Smith: If your Honor please, I have a witness, Mr. Mitchell, who has an appointment at 10:15. I wanted to present facts not in dispute here. I wonder if I could call him out of order and then make my statement afterward, if that meets your pleasure.

The Court: Very well. You may do so.

Whereupon,

### SHEPARD MITCHELL

called as a witness for and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

(Testimony of Shepard Mitchell.)

Direct Examination

The Clerk: Will you please state your name for the record?

The Witness: Shepard Mitchell.

Q. (By Mr. Smith): What is your profession?

A. Attorney.

Q. You are admitted to the State Bar of the State of California? A. Yes.

Q. What is your firm's name?

A. Mitchell, Silberberg and Knupp.

Q. How long have you been an attorney in California? A. Since 1907.

Q. During that time have you represented the Hamburger Realty Company and A. Hamburger & Sons, Inc., or any of the children or brothers or sisters?

A. Yes, I have represented Hamburger Realty, A. Hamburger & Sons, the D. A. Hamburger Company and David A. Hamburger and David A. Hamburger's family.

Q. Did you ever have any business relations relative to the M. A. Hamburger Estate or the M. A. Hamburger Trust?

A. Yes. D. A. Hamburger was the first trustee of that trust. My firm was attorneys for the trustee. I had a great deal to do with it.

Q. Over what period of years would you say that relationship existed?

A. Well, somewhere around '33, I think, Mose

(Testimony of Shepard Mitchell.)

Hamburger died. That carried until Dave Hamburger's death, when the successor trustees came on. I think it was about September, 1943. [66]

Q. You think David Hamburger deceased in 1943? A. September, I believe it was, 1943.

Q. He had over a long period of years or otherwise been president and managing director of the Hamburger Realty Company and A. Hamburger & Sons? A. That is right.

Q. What was the condition of his health in, say, about October, October 13, 1941?

Mr. Smith: October 13, 1941, is our basic date, if your Honor please.

The Witness: Well, his health, he was a permanent invalid at that time, bedridden. As a matter of fact, at that time the doctors were only giving him a month or two to live; he kept going.

Q. (By Mr. Smith): Prior to that, what had been his physical and mental condition?

A. He had been gradually failing. He had high blood pressure and diabetes and various things. heart trouble and things that go together.

You asked as to his mental condition. I could say he was sane, but he was very definitely senile. He was living in the past very much.

Mr. Tonjes: He was what?

Mr. Smith: Senile. [67]

Q. (By Mr. Smith): You have been acquainted, of course, over this same period of years with P. L. Nathan? A. Yes.



(Testimony of Shepard Mitchell.)

Q. He was the assistant manager?

A. He was the vice-president.

Q. Tell us about his physical condition and mental equipment about October, 1941.

A. Well, Mr. Nathan also was in bad physical condition at that time, but, nevertheless, he was coming down to the office. Dave Hamburger had ceased to come down to the office. We held the meetings; if we had to have a meeting of his family corporation we went out to his house.

Q. At those times would he be in bed?

A. Oh, yes. His operations were just a formality. We prepared the minutes and had everything ready, and he just sat there while the other two members of the family, on the board of directors, transacted the business.

Q. What is your recollection as to Mr. Nathan's activity in the business in 1940 and 1941?

A. Mr. Nathan at that time and at any other time, in connection with this company, has done practically nothing, in my opinion. He wasn't then very sturdy or strong.

He also, in my opinion, was showing signs of senility, getting to the point where he told things over and over and [68] over again. But he was in better condition than Dave was.

Q. What would you say as to the business abilities of the three ladies, sisters?

Mr. Tonjes: That is objected to, your Honor, as entirely too speculative.

Mr. Smith: If your Honor please, we think it



(Testimony of Shepard Mitchell.)

is important because the purchaser of the stock is going to look to the management and the future management.

The Court: I am not very well oriented here. I hardly know what I am trying.

Mr. Smith: May we let this question go in, subject to a motion to strike later on?

The Court: I think I will do that.

Mr. Smith: I will appreciate that.

Mr. Tonjes: May I state my position? This man hasn't shown he is qualified to judge any business ability. He states he is an attorney and has performed some of the duties an attorney would. I submit that wouldn't qualify him.

The Court: What is the question? Let's hear the question.

(The question was read.)

The Court: I suppose you mean by that their general mental capacity to carry on.

Mr. Smith: If they had business experience.

The Court: Business experience? [69]

Mr. Smith: Yes.

The Court: I will permit him to answer. The objection is overruled.

The Witness: Who are you referring to?

Q. (By Mr. Smith): Mrs. Marx, Evelyn Hamburger. A. The third sister is Mrs. Nathan.

Q. Mrs. Nathan is gone. I guess there are only two, two ladies, Mrs. Marx and Evelyn Hamburger. Those are two of the sisters.

(Testimony of Shepard Mitchell.)

A. Except Mrs. David Hamburger; we do have Dave who was on the board of directors.

Q. I will ask you about her. The three of them.

A. They were different. Mrs. D. A. Hamburger not only has no business ability, but will not—she has been brought up where her husband did everything, and at the present time and always she never has participated in business and doesn't. She does what she is told to do.

Mrs. Marx and Mrs. Evelyn Hamburger are to be gauged from a different standard. Prior to the time of the death of Dave they had no opportunity, if they had any business ability, to exercise it, because they were absolutely completely excluded from participation in the management of the company's businesses. Since that time they have come in where they have had to take some responsibility. I think Mrs. Marx, in my opinion, [70] is——

Q. You are testifying to a situation now that existed after October 13, 1941? A. Yes, I am.

Q. Confine your answer to conditions as of October 13, 1941, and prior thereto, as to the business experience, business activities and business judgment, if you know, as to any one of these three ladies.

A. I had no occasions when I would see their business judgment for the reason they were not transacting any business. As I say, up until many years later they were not and did not in any manner participate in the business. Mrs. Hamburger

(Testimony of Shepard Mitchell.)

didn't attempt to, she lived on the money she got from the corporation.

Q. The stockholders of D. A. Hamburger and Company, as of October 13, 1941, will you tell us who they were and what shares they held?

Mr. Tonjes: You mean D. A. Hamburger?

Mr. Smith: Did we stipulate to that? I mean D. A.

Mr. Tonjes: What is the relevancy of that, Mr. Smith?

Mr. Smith: Merely on the notes and on the question of who may come into control of the business, what the management might subsequently be.

Mr. Tonjes: We have no question of value of notes; [71] have we?

Mr. Smith: No. But our position is it is weak management, almost infirmed management. When the buyer buys a minority interest he is going to give consideration to the type of management that is going to look after his interests, if you theoretically sell the stocks in this law suit.

Mr. Tonjes: Will you restate your question, Mr. Smith?

Q. (By Mr. Smith): The stockholders and their respective stock holdings on the basic date in D. A. Hamburger Company.

Mr. Tonjes: I appreciate that. What is your question again? Have the reporter read it.

The Court: The last question was not complete. Maybe you had better rephrase the whole question.

Mr. Smith: Let me start over again.



(Testimony of Shepard Mitchell.)

Q. (By Mr. Smith): Mr. Mitchell, could you give us the names of the stockholders as of October 13, 1941, of the D. A. Hamburger Company and their respective stock ownership?

A. David A. Hamburger, 10,508 shares; Catherine F. Hamburger, 5,896 shares;—

Mr. Tonjes: In what corporation is this?

The Witness: David A. Hamburger. Florence H. Becker, 2,803 shares; Arthur Hamburger, 1,832 shares; Howard [72] Hamburger, 1,832 shares.

Q. (By Mr. Smith): Could you tell us something of the business experience or business judgment of the Hamburger children?

A. Are you relating that to a time?

Q. Yes. To October. That is, I assume that Florence, Arthur and Howard are children of David A. Hamburger.

A. And Catherine.

Q. And Catherine? A. That is right.

Q. As to October 13, 1941, their business experience.

A. At that time it had been nothing, excepting Arthur Hamburger had been in a mining venture of some kind or other. That was very disastrous and would be against his business ability. Since then he has been in nothing.

Q. Have any one of David Hamburger's children ever held positions in Hamburger Realty or David A. Hamburger & Sons?

A. Hamburger Realty or Hamburger & Sons?

Q. Yes.



(Testimony of Shepard Mitchell.)

A. I think the daughter occupied a directorship, yes.

Q. Any office as an officer of any kind?

A. I am not sure. I won't answer that without looking at the records.

Q. You have with you here the decree of final distribution? [73]           A. Yes.

Q. Order of distribution in M. A. Hamburger Estate?           A. Yes.

Q. You are familiar with the distribution of the stock indenture in that estate owned by him in the Hamburger Realty and A. Hamburger & Sons?

A. Well, I am familiar to a point. There are contingent gifts over. There are several trust provisions with respect to particularly Arthur Hamburger. Just a broad picture——

Q. Maybe I can simplify that. We have stipulated as to the number of shares in the M. A. Hamburger trust. You tell us the terms of the trust, who the trustees were on October 13, 1941.

Mr. Tonjes: Mr. Smith, I think you are in error we have stipulated to any of the terms in connection with any Hamburger trust.

Mr. Smith: We stipulated to the shares, the number of shares; we stipulated to that.

Mr. Tonjes: The number of shares?

Mr. Smith: In the M. A. Hamburger trust. I think so.

Mr. Tonjes: I see. All right.

Q. (By Mr. Smith): Will you answer the question?

(Testimony of Shepard Mitchell.)

A. M. A. Hamburger, as appears from the order and decree, left his property in trust. The first trustee was David A. [74] Hamburger. Then the date you refer to David A. Hamburger was then duly qualified and acting as that trustee.

The decree divided the trust estate into two trusts, I think it was Trust Fund A and Trust Fund B. Trust Fund A was 25 per cent of the residue. Trust Fund B was 75 per cent.

David A. Hamburger received a life estate in Trust Fund A. The three sisters received the remaining—received each a third of the income from Trust Fund B. On the death of Dave Hamburger, any of the sisters being alive, Trust Fund A merged into Trust Fund B so that the life estate that Dave Hamburger had then went over to the sisters.

So that if all three sisters were then alive they should have a third of the entire estate, a life estate. Then as each sister died the other surviving sisters acquired that life estate interest of the deceased.

Q. With respect to the date of the death, whether they pre-deceased him or not?

A. That is true. Dave Hamburger's life estate never enlarged by the death of any of the sisters. He got his 25 per cent of the estate out of Trust Fund A. When he died that was the end of it for him and his family. The remainder interests, after the death of the last survivor of Dave Hamburger and the three sisters went generally to Dave Hamburger's children and their issue.

It isn't in the form right straight through of a

(Testimony of Shepard Mitchell.)

remainder there. There are some superimposed trusts after that, but the beneficiaries are always in Dave Hamburger's family and never in the sisters' family.

Q. Under the trust indenture, did the full voting power of the stock in the Hamburger Realty and Hamburger & Sons vest in Dave Hamburger?

A. Yes. In saying that, I think I should make a qualification. There was no limitation or provisions with respect to the voting power of stock in the M. A. Hamburger estate, so, of course, the legal conclusion is the trustee votes. Nevertheless, in connection with the will contest of the M. A. Hamburger estate and a final settlement there were extensive agreements drawn up under which the——

Q. I will go into that in just a minute.

A. I just want to qualify my answer as to the voting stock.

Q. The trustee, though, under the trust was given very broad powers?

A. Oh, yes.

Q. Which, in your opinion as a lawyer, would include the full right, undiminished right to vote the stock?

A. I think so.

Q. You made reference to the fact they had litigation. Tell us about that. That would be in relation to Mose Hamburger estate? [76]

A. A will contest. The sisters contested the wills.

Q. Between the four children, Dave and the three sisters?

A. Yes.

Q. Just tell us about that, whether it was a



(Testimony of Shepard Mitchell.)

heated controversy or whether it was rather a friendly controversy.

A. It was very, very bitter and permanently breached the relations between the three sisters, on the one side, and Dave on the other, so that they never spoke if they could avoid it. They had nothing but bitter things to say against each other.

Q. Were the sisters in complete accord and friendly among themselves?

A. Yes. They formed a unit against Dave Hamburger from that time on.

Q. Were there agreements made subsequent to that time relative to the operation of the company in some way?      A. Yes.

Q. What was the effect of those agreements and when were they made?

Mr. Tonjes: Were those agreements in writing?

The Witness: Yes.

Mr. Tonjes: I object to the question.

The Court: What year were they made?

The Witness: I would want to look at it. It was [77] made right at the termination of the will contest. The will contest was a non-suit and then following that there were a lot of problems to work out. The lawyers worked them out through these agreements of the respective subject matters, being largely control of the corporation and dividends.

Q. In relation to the completion of the agreements and working out the understanding, did all the parties have a single lawyer or how were they represented?      A. No, no, no.



(Testimony of Shepard Mitchell.)

Q. They didn't agree on a single lawyer?

A. We represented Dave Hamburger and Mrs.—let's see, Evelyn Hamburger had James Bennett of Finlayson, Bennett & Morrow. I think Mrs. Marx had Dave Cannonbaum. I guess that is sufficient to answer your question. They were represented by——

Q. Was the Nathan family represented in that in any way with separate counsel; do you recall?

A. I think I would want to refresh my memory.

Q. Do you know whether Newlin & Ashburn represented the Nathan family?

A. Yes, Allen Ashburn took care of it personally.

Q. About how long a time did it consume for the parties to all get together on an agreement?

A. The negotiations were very extended. I might describe them as very brittle. They looked rather hopeless [78] most of the time.

Q. Over weeks or months?

A. I think months.

Q. Months?           A. Yes.

Q. What was the relationship at the basic date here and prior thereto between D. A. Hamburger and Mr. Nathan. Mr. Nathan being the husband of the decedent.

Mr. Tonjes: Did you represent either of these persons?

The Witness: I represented Dave Hamburger, not Mr. Nathan.

Mr. Tonjes: Did you represent Mr. Hamburger in connection with deals with Mr. Nathan?

(Testimony of Shepard Mitchell.)

The Witness: Mr. Hamburger didn't make deals with Mr. Nathan. It was with Mrs. Nathan. I represented M. Hamburger and Dave Hamburger, my firm did, right straight through on these transactions.

Mr. Tonjes: In connection with transactions with Mr. or Mrs. Nathan?

The Witness: Yes.

Mr. Tonjes: Go ahead.

Q. (By Mr. Smith): Answer the question. What was the relationship between Dave Hamburger and P. L. Nathan? [79]

A. Are you referring now to the time before Mrs. Nathan's death?

Q. Yes. A. Terrifically bitter.

Q. Did that continue to October 13, 1941?

A. It continued to this date, as far as P. L. Nathan is concerned. Dave Hamburger is dead or it would continue to him.

Mr. Smith: That is all.

#### Cross Examination

By Mr. Tonjes:

Q. You say there were some agreements finally reduced to writing? A. Yes.

Q. Do you know where those agreements are?

A. Yes, I have some of them. I have copies of them in my office. As a matter of fact, they were largely reduced, included in the order and decree, also.

Q. What is the date of those agreements, if you know?

(Testimony of Shepard Mitchell.)

A. I can't tell you exactly. They were just about the time of this decree. Fourth day of October, 1935, is the decree. And as soon as we got the agreement worked out we went right up to court and got our decree worked out.

Q. Were the terms of the various agreements all incorporated in that decree? [80]

A. I don't know if they all were, but some of them were. Insofar as the M. A. Hamburger estate was involved they were. I think there are other terms that are not set forth here.

Mr. Tonjes: Might I ask, if your Honor please, the document described by the witness as a decree of the court be marked for identification?

The Court: It may be handed to the clerk, and marked for identification as Respondent's Exhibit A.

(The document referred to was marked as Respondent's Exhibit A, for identification.)

The Witness: Could I have the privilege of removing it for making a copy? That is my office copy.

Q. (By Mr. Tonjes): I don't know whether we will put in evidence. I want to have it marked so we can examine it and see.

A. If you need it I will get you a photostatic copy.

Q. Thank you, sir. You may want to make reference to it again in connection with questions I might ask.



(Testimony of Shepard Mitchell.)

Did that include the terms of a trust agreement that was entered into at or about that time?

A. There isn't any trust agreement. The terms of the trust——

Q. None in connection with that?

A. The M. A. Hamburger, the terms of the M. A. Hamburger trust were in the first instance, of course, in M. A. Hamburger's [81] will, which, in turn, were incorporated in the decree. So the terms of your trust of the M. A. Hamburger trust are in the decree.

Q. Thank you. Now, you made reference to the fact that you prepared the minutes. To what corporation did you have reference when you made that statement?

A. D. A. Hamburger Corporation.

Q. Did you ever prepare any minutes in connection with the Hamburger Realty Company or the A. Hamburger & Sons, Inc.?

A. Oh, yes, many times.

Q. You prepared those, too?

A. Not always. Very frequently they prepared them in their own offices. Mr. Nally or one of the girls there would do it. Sometimes they would send them up to me for approval, depending on what was involved in them. If they were technical or involved very frequently I would draw them. I have drawn many, many long minutes for those two companies.

Q. When did you have your discussion with them in that connection?

A. In what connection?



(Testimony of Shepard Mitchell.)

Q. In connection with the minutes you would prepare.

A. I was at that time considered as acting attorney for those two companies. I attended the board of directors' meetings. I attended practically all of them during those years, right straight through. The board would have me draw [82] the minutes.

Q. After a certain course of action was decided upon, you would record that in the minutes; is that correct?

A. Yes, in general. In practically all cases the course of action was decided upon before the meetings were held. And in many cases the minutes were even drawn beforehand.

Q. Could you state briefly, if you know, how the policies of the corporations were formulated and by whom?

A. Pretty much by the lawyers for the different parties.

Q. By the lawyers?

A. That is right. The clients wouldn't talk to each other. They couldn't get together. The lawyers would get together and work out a policy and each lawyer would try to go out and sell it to his individual client and get them to vote on it.

Q. They were all capable, experienced men, the attorneys?      A. Oh, yes.

Q. Do you know in a general way what the nature of the business was during the year 1941?

A. Of any particular company?

(Testimony of Shepard Mitchell.)

Q. Of, first, the Hamburger Realty Company, we will say.

A. I think the Hamburger Realty Company wasn't doing any particular business. It was collecting rents.

Q. That is, they owned a lot of property and some stocks and bonds? [83]

A. No, they didn't own very much stocks and bonds. The chief asset of the Hamburger Realty was the property that is at Eighth and Broadway and Hill Streets, occupied by the May Company. The May Company has executed, as lessee, a long-term lease on that. Hamburger Realty is largely collecting rent. They owned a few other properties. There was not much action in regard to them.

Q. Could you describe briefly what managerial functions were required to carry out the functions of the corporation at that time?

A. Hamburger Realty?

Q. Yes.

A. I think there was very little managerial functioning required at that time in the Hamburger Realty.

Q. To the best of your knowledge you don't know of any sales or transactions, that is, sales of real property, or things of that sort?

A. In Hamburger Realty?

Q. Yes.

A. I don't offhand recall any that occurred. If there was it was just casual.

Q. Were you consulted or was there any discus-

(Testimony of Shepard Mitchell.)

sion as to whether any properties would be bought or sold to take up with your clients, in order to get together with the rest of the stockholders? [84]

A. In Hamburger Realty?

Q. Yes. A. I question if there was.

Q. You don't believe there were?

A. I doubt it. As I say, if there was it was casual.

Q. Would there have been any occasion to seek the advice of men familiar with the handling of real estate at or about that time?

A. In Hamburger Realty?

Q. Yes. A. I think not.

Q. Of course, they had to pay taxes. Do you know whether or not they employed tax counsel to prepare their tax returns? A. Yes.

Q. Do you know who it was?

A. Claude I. Parker's office were their auditors and tax counsel.

Q. Would you say they were a capable firm?

A. I have great respect for them.

Q. Do you know whether or not they had any employees? A. Claude I. Parker?

Q. No, the Hamburger Realty?

A. Yes, Hamburger Realty and A. Hamburger & Sons had joint employees. Mr. Nally had been there and they had two or three girls there. [85]

Q. What did they do, if you know?

A. Just clerical work, no administrative work of any kind.

Q. Do you know whether or not the trustees ac-



(Testimony of Shepard Mitchell.)

tually voted the stock in the Hamburger Realty Company?

A. D. A. Hamburger, as trustee of the Mose Hamburger estate, voted the trust in that stock.

Q. They did? A. Yes.

Q. I believe your testimony was they had the legal right, but I don't think you actually stated they actually voted it.

A. Oh, yes, it was voted.

Q. Would you say your answers which you have given me with respect to the Hamburger Realty Company would follow in the same course if I asked them in connection with A. Hamburger & Sons, Inc.? A. No, I would not.

Q. You would not? A. Far from it.

Q. Well then, tell me what managerial functions were required in the operation of the A. Hamburger & Sons, Inc.

A. I will tell you what in my opinion should have been required, but wasn't done.

Q. I don't want to know that. I want to know what was [86] actually done.

A. Just nothing, stagnated.

Q. Did they have any employees?

A. They had the same people that worked for Hamburger Realty, and Hamburger & Sons. In a clerical sort of way, yes, two or three people.

Q. I would gather their functions would be merely to see the rents were collected and properly deposited, and so forth; is that right?

(Testimony of Shepard Mitchell.)

A. Yes. And keep the books, do stenographic work and things like that.

Q. They didn't have any opportunity for the exercise of any business discretion, so to speak; did they?      A. No.

Q. Do you know whether or not the A. Hamburger & Sons, Inc., bought or sold any property during the year 1941?

A. Well, they sold property from time to time. But in 1941 I couldn't tell you without checking the records.

Q. Do you recall whether or not you were ever called upon to discuss with the other attorneys representing the other stockholders whether or not any certain transactions would be advisable transactions or not?

A. Yes, there were numerous transactions occurred in that company I am sure in which the lawyers were consulted. There were transactions which the lawyers themselves started [87] and tried to get across with the company, and with their clients and the directors, and didn't get any place.

Q. What did they do in that connection?

A. Well, I have named about three things. I will start with the last one, if you choose; what the lawyers tried to do. It was somewhere around this time, for instance, that the lawyers considered it was highly advisable that the company should——

Q. I don't mean that, Mr. Mitchell. I mean what did you actually do in connection with trans-

(Testimony of Shepard Mitchell.)

actions which were actually under discussion and consideration?

A. Well, these were under consideration and discussion by the lawyers, and originated with the lawyers. They took it up with the directors and the directors considered it, and the thing died, the one I was telling you about.

Other transactions, every now and then someone would come in and want to buy a piece of real estate. He would see Mr. Nathan, for instance, in Mr. Nathan's office. Mr. Nathan would very frequently, I think usually as a matter of practice he called me and told me about it. Sometimes I checked it and sometimes I didn't. If I were given the go sign usually someone in my office would take over the details of handling the escrow and completing the deal.

Q. Do you know whether or not they consulted any persons experienced in buying and selling real estate to determine [88] whether or not it was a good transaction from the viewpoint of the corporation?

A. I believe that there was a real estate man here that Mr. Nathan knew, Mr. McGarry, I believe it was; I am not sure. Sometimes he would ask Mr. McGarry what he thought of it. As far as I know generally the answer is no.

Q. Would you, as a lawyer, approve that sort of procedure?

A. Do you mean as a means of selling property?

Q. Yes, as a method of arriving at whether or



(Testimony of Shepard Mitchell.)

not it was a good transaction or not, from the viewpoint of the corporation?

A. No, I didn't approve of it. I didn't like it. I protested it. I tried to change it.

Q. What was your approach? What would it have been? A. What would be my approach?

Q. Yes.

A. The approach about this time, which I tried to get, was to get a very competent, experienced organization handling liquidation of real property and managing real property to go down and make a survey of all the property, make a report and take the thing over. I got far enough that the directors consented that would be done, and it was done. But Nathan wouldn't have any part of it.

Q. Generally your duty was and you functioned as a [89] supervisor to protect the rights of your parties in interest; is that correct?

A. That is a fair statement, yes. Generally I was in that role, even though I was actually drawing papers for the company. I think I would primarily be viewed as a representative of the D .A. Hamburger interests.

Mr. Tonjes: I think that is all, Mr. Mitchell.

#### Redirect Examination

By Mr. Smith:

Q. Mr. Mitchell, at the board of directors meetings were the corporations represented by attorneys?

A. I think at practically all meetings the respective counsel of the directors were present. The meet-

(Testimony of Shepard Mitchell.)

ings were very formal. Everything was agreed to and worked out in advance by the lawyers.

Q. Would there be as many as three or four lawyers at the directors meetings?

A. That is right; four and five sometimes.

Q. Each of them representing probably one of the brothers or one of the sisters?

A. That is right.

Q. You have indicated that there was a difference in the management, or rather the management requirements between the Hamburger—with relation to the Hamburger Realty and A. Hamburger & Sons. [90]

A. That is true.

Q. Will you amplify that?

A. With respect to A. Hamburger & Sons I have told you the nature of the Hamburger Realty as being largely a rent collection corporation. A Hamburger & Sons is largely a property owning corporation. It owns apartment houses. It owns a big warehouse that is rented to the May Company down on Jefferson. It owns vacant properties out in different places. It also owns vacant property on Hill Street. Its management is the management of any big company that is in the business of handling quite a number of real properties, improved and unimproved, of very substantial value, both individually and in the aggregate.

Q. And loans, there were substantial loans?

A. Oh, yes. A lot of the properties they had were the result of foreclosures of loans.

(Testimony of Shepard Mitchell.)

Q. Were there any loans by the corporation to the stockholders?

A. Yes, I don't just know—that was a legal complication more than a business complication. That didn't call for business management particularly.

You asked about it. The various stockholders in the past, before Mose Hamburger died, had drawn—they call them drawing accounts. They withdrew large sums of money from the corporation and they accumulated large sums. Dave Hamburger, [91] who owned about a third interest in these corporations, had a drawing account accumulated of probably over \$600,000.00. And other relative—they weren't in proportion to the stock holdings at all. They took what they needed apparently.

When we came into it and made all this settlement we funded those things in the notes and pledged the stock of the company to secure it. Since that time the thing has been just a frozen transaction, no business management involved.

Q. At a very low interest rate?

A. I think it is 2 per cent.

Q. Was there any evidence of the management prior to October, 1941, grooming any younger people to take their places in the management and operation of the business?

A. Well, I will say no. The attempt to put in some nepotism by Dave Hamburger produced the split between them. Florence Hamburger married Fred Becker, a young lawyer, and brought him out here from Washington and wanted to give him a



(Testimony of Shepard Mitchell.)

soft job in the company and wanted to take away some of Nathan's salary to give it to Fred. That is where the fight began between those two men.

Mr. Smith: That is all.

Mr. Tonjes: That is all, Mr. Mitchell. Thank you.

The Court: Off the record.

(Discussion off the record.)

The Court: On the record. [92]

Mr. Blum: May the witness be excused, your Honor?

The Court: Yes.

(Witness excused.)

Mr. Smith: Is your Honor ready for me to proceed with the opening statement?

The Court: You may proceed.

Mr. Smith: We appreciate your Honor permitting us to put the witness on out of order.

Opening Statement on Behalf of the Petitioner  
By Mr. Smith

Mr. Smith: If the Court please, this is a Federal Estate tax case. The decedent Belle Nathan having died a resident of the County of Los Angeles, October 13, 1940. The executors, who were her husband, P. M. Nathan, and Evelyn Hamburger, elected to make the return in the option period. We therefore have our basic date of October 13, 1941.

We have stipulated to many of the underlying facts, facts particularly which will conserve the time of this Court, making it unnecessary to pro-

duce witnesses as to the value of the underlying assets. I feel certain it will facilitate the understanding of my opening statement if we could present in evidence now the stipulation of facts with the exhibits. May that be a joint offer, Mr. Tonjes?

Mr. Tonjes: Yes, Mr. Smith.

Mr. Smith: We will make it a joint offer, if you [93] please. We have here, if your Honor please, in accordance with the rules of the Board, a complete stipulation with all of the exhibits attached. We also have a stipulation without the exhibits. I think we had probably better offer them as two separate exhibits. What is your Honor's pleasure?

The Court: You have the stipulation in duplicate, as required, but you do not have the exhibits in duplicate?

Mr. Smith: That is true, your Honor.

The Court: Of course, the difficulty with that is in the event of an appeal you have to go to the trouble of having copies made of any exhibits that you wish sent up. Those exhibits are on file.

Mr. Smith: We want to conform with the Board's rules.

The Court: We permit you to not file duplicates of the exhibits. I am just telling you what the penalty is on it.

Mr. Smith: On the exhibits. We are not doing that on the stipulation.

The Court: The stipulation may be handed to the clerk and marked a part of the record in the case.

Mr. Smith: We will offer first the stipulation with all the exhibits attached.

The Court: And the copy. It all goes together.

Mr. Smith: And the copy of the stipulation, as No. 1. As I understand, the exhibits are in evidence as a part of the stipulation. [94]

The Court: That is right.

Mr. Smith: And taking the numbers to which the exhibit numbers—I don't want any confusion on that. The exhibit numbers are 1, 2 and 3. I wonder if it would help to make this Petitioner's Exhibit A—or the joint exhibit.

The Court: You have some nine exhibits attached, is that right?

Mr. Tonjes: That is the way I understand it, your Honor.

The Court: Nine exhibits?

Mr. Tonjes: Nine exhibits.

The Court: We will start numbering any exhibits that the petitioner chooses to offer, and the next exhibit may be marked as Petitioner's Exhibit No. 10. The respondent's exhibits will be lettered. That will help you keep your exhibits straight, I think, gentlemen.

Mr. Smith: If your Honor please, we have here for valuation two stocks, each representing approximately eleven per cent of the outstanding and issued stock of the Hamburger Realty Company and A. Hamburger & Sons, two California corporations, whose business was confined at its principal office in this county.

The Court: Off the record.

(Discussion off the record.)



The Court: On the record. [95]

Mr. Smith: The par value of the stock was \$1000.00.

The Court: \$1000.00 par value each?

Mr. Smith: Each. For each company. As I have indicated, there were no sales. The stocks were unlisted. Apparently no transactions that would in any way reflect the value of either of these stocks. There was no preferred stock, or no bonds issued by either of the companies. We have a question merely of the value of the common stock.

The Court: That is really Issues A and B of your petition?

Mr. Smith: That is right, sir.

The Court: Now, what about the other issues? Are they being waived?

Mr. Smith: We waive Error (e). The other issue, as to Errors (c) and (d), executors' and attorneys' fees, we expect, I believe, a stipulation with the Government that that matter may be deferred until after the opinion of the court, and taken up under Rule 50, as to what those additional fees are regarding the services of the attorneys and executors.

The Court: There will be no additional evidence required on those?

Mr. Tonjes: I don't think so, your Honor. That will be a matter of rather easy determination, I would say.

The Court: So that the two issues we are really trying are the Issues A and B. [96]

Mr. Smith: The valuation of the two stocks.

The Court: And of the A. Hamburger & Sons, that is 425.817 shares; is that correct?

Mr. Smith: That is true.

The Court: And of the Hamburger Realty it is 104.167 shares?

Mr. Smith: That is right.

The Court: Very well. Thank you.

Mr. Smith: If your Honor please, the Commissioner in the 90-day letter, in the Exhibit A to our complaint, fixed a value on the Hamburger Realty stock at \$4,850.00.

The Court: Per share?

Mr. Smith: Per share. So your Honor will have the whole picture, our office did not come into this case until after the issuing of the 90-day letter. We were not attorneys nor did we represent the executors in the probate or in the relation to the determination of the California Inheritance tax. We had nothing to do with the preparation of the Federal estate tax, Form 706.

In the Form 706 the executors returned a value on the Hamburger Realty Company of \$2,113.55 per share. In our petition we did not challenge that value.

However, now since having the opportunity to confer with experts in preparing the case for trial, we find we were in error in accepting the Government's determination of [97] \$2,113.55 per share.

The Court: You mean as to what the executors report?

Mr. Smith: Excuse me. The executors' determination. Now, it is our opinion that the value of that stock is much lower. We ask leave, if we may, to amend our petition to conform to the proof, if that is agreeable with your Honor in that respect.

The Court: Is there any objection to amending the petition?

Mr. Tonjes: No objection, your Honor, provided the amendment is limited to the value of the stock of the two corporations, or the one corporation, rather.

Mr. Smith: Now, we will take up the other corporation.

The Court: Do you care to state at this juncture the substance of what your amendment will be, the value you expect to——

Mr. Smith: Well, it may be around about \$1300.00 a share.

The Court: Around \$1300.00 per share.

Mr. Smith: Of course, that is stated with some reservation, for us to give consideration to the cross examination of our witness.

The Court: Very well. Now, as to the other, the Hamburger Realty Company. [98]

Mr. Smith: Of A. Hamburger & Sons. The other was Hamburger Realty.

The Court: It was?

Mr. Smith: Yes. Those figures I gave you previously were for Hamburger Realty Company. In the A. Hamburger & Sons the 90-day statutory letter and statutory notice fixed a value of \$1,202.16. The executors returned a value in Form 706 of \$983.13. I might say that the return value was the value that



was at that time, of course, determined by the executors or their attorneys.

Our petition in this matter cites the return value as being in error, and we say that the fair market value, on the basic date, was \$500.00 per share. As a result we ask for a refund of \$51,229.95.

We also ask that the deficiency of \$103,177.16 be abated.

It is now, however, our opinion that the value set forth in our estimate of fair market value in the petition was high. We will ask that we be granted the privilege of amending our petition to conform with the proof in that regard, as to the A. Hamburger & Sons stock. We are of the opinion at this time that the value should be around about \$300.00 per share. We have leases involved in the Hamburger Realty Company upon which we will have expert testimony.

The Court: That, you mean as part of the assets?

Mr. Smith: Yes, one of the principal assets of the Hamburger Realty Company.

We also, as your Honor will notice, have stipulated in the Exhibits A and B to the fair market value. If your Honor will find the first two exhibits to the stipulation of facts—they are Exhibits 1—in relation to Hamburger Realty Company, your Honor will note we have stipulated to the fair market value of the assets on the basic date. It will be in Column B, in the amount of \$3,927,153.64. Therefore, no testimony will be presented as to the value of the underlying assets.

The Court: I presume it is covered here, but I don't have it in mind. What were the total number

of shares outstanding in the Hamburger Realty?

Mr. Smith: In the Hamburger Realty, there is 1000 shares, and in the A. Hamburger & Sons there was 3774.183.

Exhibit 4, if your Honor please, indicates that the stipulated value of the underlying assets of the A. Hamburger & Sons is \$3,475,516.03, with the two exceptions that this honorable court will be required to assert in that exhibit, the value fixed by it on the 104.167 shares of the Hamburger Realty Company, which is owned by the A. Hamburger & Sons.

Theories that will be advanced by the Petitioner are in a general way that income would be the attractive [100] feature which would induce a purchaser to buy the minority interest in these two companies, while we understand that the Government is taking the position that the value of the underlying assets and the balance sheet would be the principal attraction to this assumed purchaser. I think that is all.

Mr. Tonjes: I would like to ask one question, Mr. Smith. Did you state that the deficiency notice included the stock of A. Hamburger & Sons, Inc., at \$1200.00?

Mr. Smith: Deficiency notice? I think I did.

The Court: \$1202.16 is what I wrote down.

Mr. Tonjes: If your Honor please, I think there is an inaccuracy there. I think that it was included in the deficiency notice as an even \$1200.00 a share.

The Court: Even \$1200.00?

Mr. Smith: I guess that is right. There is also a little over plus in the Hamburger Realty. I remember. That would come down to forty-eight-fifty.

Mr. Tonjes: It was included in the deficiency notice at forty-eight-fifty.

Mr. Smith: That is right. I recall that. I appreciate that correction.

Opening Statement on Behalf of the Respondent  
By Mr. Tonjes

Mr. Tonjes: If your Honor please, in view of Mr. Smith's statement there is hardly any need that I make any [101] lengthy statement. It would be in a large measure repetition.

The Respondent did include the stock of the Hamburger Realty Company in the determination of the decedent's estate at \$4850.00 a share. I will admit now that I don't believe that the testimony which will be adduced by the Petitioner and by the Respondent either justified that holding. I believe, however, that the evidence will show clearly that the stock is worth about \$4,000.00 a share. With that in mind——

The Court: Are you valuing it on the basis of the total value of the assets?

Mr. Tonjes: Oh, no, your Honor. I wanted to comment on the Petitioner's statement.

The Court: Pardon the interruption.

Mr. Tonjes: I expect that will be one of the elements which the witnesses produced by the Respondent will testify they considered. But I think all of the witnesses will state they took into consideration many of the other elements which the courts have decided time and again should be properly considered.



I think there might be some disagreement as to the weight to be attached to the various factors. And perhaps I can say that maybe the Respondent attaches a little more importance to the underlying asset value than the Petitioner does. [102]

A. Hamburger & Sons, in the deficiency notice, as I stated, that was included at \$1200.00 a share. I believe that the testimony and all of the evidence will show that the stock has a value of approximately \$1000.00 a share.

With respect to the additional claim, that is, the claim for additional fees for the executors and attorneys' fees, I think, your Honor, that that can be well disposed of under Rule 50 after the matter has been decided as to how much additional fees are to be paid. It would be very simple, I would say.

The Court: Very well.

Mr. Blum: I don't intend this to be any statement, your Honor. I think perhaps the testimony may be a little better understood by you if I recite some facts with respect to leases.

The Hamburger Realty Company entered into a lease many, many years ago with the A. Hamburger & Sons. In March, 1923, A. Hamburger & Sons subleased to the May Company Department Stores for a period of 20 years, which then extended with their unexpired terms with the lease they had with Hamburger Realty, so their lease to May Company terminated on December 31, 1942.

On the same date the Hamburger Realty Company entered into a lease with the May Company Department Stores for a term of 30 years, beginning Jan-

uary 1, 1943, to pick up [103] with the two combined leases, a period of 50 years in which the building, which is referred to by Mr. Mitchell on Eighth Street, Broadway and Hill Streets, in this city, was leased to the May Company for a period of 50 years.

Our basic date being October 13, 1941, we will have with respect to A. Hamburger & Sons, in computing the value of their stock, and insofar as the income factor is important, a prior 5-year earning period, or 6 or 7, whatever the court deems necessary to take. But we will, on that date, know that one year and two months after the basic date that the A. Hamburger & Sons will lose the rental from the May Company Department Stores by reason of the termination of its lease to the May Department Stores, and the termination of its lease from the Hamburger Realty. So that the Hamburger Realty lease will then pick up, as I say, from January 1, 1943, forward.

If your Honor please, the lease from Hamburger Realty to A. Hamburger & Sons on the face actually terminates some time in 1940, I believe. Isn't it?

Mr. Tonjes: May 1, 1940.

Mr. Blum: However, their lease to May Company extended on beyond that term and they actually collected the rental. For all purposes, in order not to confuse the record, we are treating the May Company lease to A. Hamburger & Sons as being co-extensive with the May Company lease to Hamburger Realty to December 31, 1942. [104]

Mr. Tonjes: I think that is correct.

The Court: We will suspend at this time for a brief recess.

(A short recess was taken.)

Whereupon,

JOHN B. MILLIKEN

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you please state your full name for the record?

The Witness: John B. Milliken.

Q. (By Mr. Smith): State your business or profession. A. Attorney.

Q. You are admitted to the State Bar of the State of California? A. I am, yes, sir.

Q. In your professional matters, have you represented at any time the Hamburger Realty Company or the A. Hamburger & Sons, or any of the Hamburger children?

A. I have been rather closely identified with Hamburger Realty Company and A. Hamburger & Sons since 1934, and have particularly represented Mrs. Evelyn Hamburger, who is now, [105] following the death of David A. Hamburger, president of both corporations.

Q. Do you know what the investment policy was of either of these corporations on or about October 13, 1941?



(Testimony of John B. Milliken.)

Mr. Tonjes: That is objected to, your Honor. The witness hasn't been qualified to state whether or not he is familiar with it. He hasn't stated he represented either corporation. He said he was closely identified——

The Court: Perhaps additional qualifying questions should be asked.

Q. (By Mr. Smith): Tell us what your relationship was.

A. It is the practice of both corporations——

Q. To qualify you a little more——

A. I have attended and do attend the regular meetings of the A. Hamburger & Sons and Hamburger Realty Corporation, it being the practice and the custom of each stockholder to have his individual attorney present at all of such annual meetings or stated meetings.

At those meetings the policies, financial and otherwise, of the various corporations, are presented for discussion. The attendance upon those meetings, plus the investigation which I have made for my client, who, in turn, has a stockholder's interest in the corporations, is the basis for my familiarity with the question about which you have asked me.

Q. Well now, tell us, please, if you know, about the investment policies at October 13, 1941, and prior thereto.

A. In my judgment there was no policy, but rather a status quo policy. That is to say, there was so much family bitterness between the various stock-

(Testimony of John B. Milliken.)

holders that what one side would propose the other would oppose, and vice versa, with the result that those corporations have in reality, in my judgment, stood still with respect to business operations or recurrent business transactions or matters of policy.

Q. Was the matter of disharmony and the bitter relationship between the parties generally known in financial circles in Los Angeles on or about the basic date?

A. Yes, it is very well known. In fact, it reached the point to where Mr. David A. Hamburger drew a gun upon Mr. Nathan, who was the directing head, and we had to go to the District Attorney's office to get a restraining order. I mean that is how far the bitterness has gone; and generally known.

Q. Do you know whether or the stocks, securities of either of these companies would be acceptable to the bank as security for a loan?

Mr. Tonjes: That is objected to, your Honor.

The Court: The objection is sustained.

Q. (By Mr. Smith): Do you know whether any effort was ever made at a bank—— [107]

A. I do.

Q. ——at about the basic period here to secure a loan? A. I do.

Q. Tell us what the results were.

A. I was requested to give information to the Farmers & Merchants National Bank of this city who had, in turn, made a loan to David A. Ham-

(Testimony of John B. Milliken.)

burger with respect to stock he owned in each of these corporations.

Q. What was the result?

A. The result was that only a nominal value could be obtained with respect to the loan, of what I thought represented the real value of the stock.

Q. Do you know something about the borrowing policy or the agreements in relation to borrowing or advancements by either of these companies or both of them to the stockholders?

A. Yes. The stockholders regularly each year, pursuant to an agreement, anticipate the earnings of the year and have, at the close of each year, borrowed all of the earnings of a particular current year.

Q. What effect does that have on the continuation of the business?

A. Well, it means nothing in the business because it takes every cent of earning out of the business.

Mr. Smith: I guess that is all. [108]

#### Cross-Examination

By Mr. Tonjes:

Q. What do you mean by business of the corporation, Mr. Milliken?

A. Well, for instance, A. Hamburger & Sons owns a variety of assets, including apartment houses, very valuable vacant property in the city, hotels and many rental properties. It has been impossible to move those one way or another, either to make advantageous sales within a territory, for instance, that



(Testimony of John B. Milliken.)

may be going down, to re-employ the money in another territory where there may be, in the best judgment of realty experts, an ascending value, with the result it is simply just stagnant, in my judgment.

Q. Do you know of any occasion where the corporation had under consideration a transaction and was unable to complete it because of lack of funds?

A. I know of none for the simple reason that you could never get the stockholders, because of the enmity with each other, to agree upon any policy for the investment of funds.

I do know many instances where sales have been proposed which I, upon my investigation as general attorney for the corporation, have recommended be consummated and they have not been consummated because of the enmity felt existing between the stockholders.

Q. The fact the corporation stockholders have made loans [109] from the corporation didn't, to the best of your knowledge, ever impair any transaction which was under consideration?

A. Yes.

Q. Will you tell me when that happened?

A. For example, I have always felt there is a very valuable lot on Broadway, which, in my judgment, should be improved to obtain its greatest facility and use. That is impossible because there are no funds available, except as you might borrow on other assets of the corporation, to make that improvement.

(Testimony of John B. Milliken.)

Q. And the corporation has the capacity to borrow from its other assets?

A. If it desired to encumber all its other assets.

Q. It wouldn't have had to encumber all its other assets; would it?

A. I think any bank in town——

Q. Will you answer the question?

A. In my judgment, yes.

Q. They would have to encumber all the assets?

A. In my judgment it would.

Q. How big an improvement did the corporation consider making on this lot?

A. A minimum of three and a maximum of 600 thousand.

Q. This is the A. Hamburger & Sons Corporation you are speaking of?

A. Yes, that is right. [110]

Mr. Tonjes: I think that is all.

Mr. Smith: That is all.

(Witness excused.)

Mr. Blum: I will call Mr. Sparks.

Whereupon,

LOUIS P. SPARKS

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

(Testimony of Louis P. Sparks.)

Direct Examination

The Clerk: Will you please state your full name for the record?

The Witness: Louis P. Sparks.

Q. (By Mr. Blum): What is your business or profession, Mr. Sparks?

A. Well, I am technically termed as an insurance counsellor. I am an adviser to insurance buyers.

Q. Have you had any connection in that capacity with the Hamburger Realty Company or A. Hamburger & Sons?

A. I have been for some time employed by them as their insurance adviser.

Q. Were you on or about October 13, 1941?

A. I am not positive exactly when my employment began.

Q. It has been over a period of years?

A. It has been over a period of years.

Q. Were you called upon to examine the lease from [111] Hamburger Realty Company to May Department Stores Company and the lease of A. Hamburger & Sons to May Department Stores Company with respect to the insurance features thereof?

A. I was.

Q. The leases just referred being Exhibits 7 and 8, for the record. In that examination what did you find with respect to the lessors; being the Ham-



(Testimony of Louis P. Sparks.)

burger Realty Company and the A. Hamburger & Sons, protection?

Mr. Tonjes: At what time?

Mr. Blum: During the term of the lease.

The Witness: Well, I found that the protection required by the lease was very limited in that it required principally fire insurance and riot and civil commotion insurance and a certain amount of public liability insurance only.

Q. (By Mr. Blum): Would the Hamburger Realty Company and the A. Hamburger & Sons Company, in order to protect themselves against such hazards as fire and lighting, windstorm, cyclone, explosion, earthquake, flood and water damage and such as that, have had to take out additional insurance?

A. They would because the lease limited its requirement to 70 per cent of the cash value of the building.

Q. For what type of insurance?

A. For fire insurance only.

Q. For fire protection? [112]                      A. Yes.

Q. Did you cause to be made an analyses of the cost of the various insurance which would protect the Hamburger Realty Company and A. Hamburger & Sons?

A. I made an analysis of the various coverages which Hamburger would be required to purchase on their own if they wished to fully protect their property.

(Testimony of Louis P. Sparks.)

Q. What was the cost per year of that coverage?

Mr. Tonjes: What year?

Mr. Blum: Of any year during the term of the lease.

Mr. Tonjes: Are you talking about the lease, Mr. Blum, from 1923 to 1942, or from 1942 to——

Mr. Blum: Both.

Q. (By Mr. Blum): Both of the leases have more or less the same provisions as to the insurance coverage?

A. Yes. They are practically identical, except the lease with the Hamburger Realty Company in the last five years is different; otherwise the terms are very much the same.

Q. So that the cost of the insurance with respect to A. Hamburger & Sons' lease to May Company, would be the same per year as the cost of Hamburger Realty Company's lease to May Company up to the last five years?

A. It would be the same, except for one thing, that insurance rates are not fixed; they change, depending upon [113] what year we choose.

Q. What was the cost of the insurance as you computed it?

A. I haven't that cost before me. I would have to refresh my memory.

Q. To refresh your memory I show you a letter and ask you if you wrote that letter or caused to have it prepared?

A. I caused to have it prepared, and I wrote it in rough copy.

(Testimony of Louis P. Sparks.)

Q. Does that give the cost to which I just referred?      A. Yes.

Q. What are the costs per year?

A. The cost is \$10,487.38.

Q. Is that for the full term of both leases, or what period?

A. For the first 45 years of both leases, full 20 years of the first lease and 25 years for the second lease.

Q. What would be the cost of the last five years of the Hamburger Realty Company lease?

A. That would be \$20,395.78.

Q. The difference in those costs being made up principally in what item?

A. Principally in the earthquake item.

Q. The May Company Department Stores, according to the lease, did not have to carry the burden of any earthquake damage during the last five years of the Hamburger Realty [114] Company lease; is that correct?

A. That is my interpretation on it.

Mr. Blum: That is all.

#### Cross-Examination

By Mr. Tonjes:

Q. Let me ask you, in your conclusion, did you assign any value to fire and lighting insurance?

A. Well, the value I used was the net determined by an appraisal company.

Q. In arriving at your figure of \$10,487.38, I believe it was, did any of that total consist of protection against fire and lightning?      A. Yes.



(Testimony of Louis P. Sparks.)

Q. Do you know whether or not the building was protected by fire and lightning insurance during the period of these leases?

A. It was protected up to 70 per cent of the value.

Q. Up to 70 per cent, you say? A. Yes.

Q. You assigned then a figure in dollars to take care of a full protection?

A. Well, what I assigned is in two figures. I assigned one to take care of the difference between the 70 per cent and 100 per cent of value, and another figure taking care of the difference between 100 per cent of value and the [115] replacement cost, which is the basis of insurance on a concrete building, if you want to be fully covered.

Q. Was the building insured against that type of damage during the time of these leases?

A. It was not.

Q. It was not?

A. No. You asked me a statement there. I might clarify that one statement, if you will permit me, on whether or not the building was insured up to 70 per cent. It was insured to a hundred per cent, the lessor paying the difference between the 70 and 100 per cent.

Q. You were furnished a copy of a letter to refresh your recollection. Appearing thereon is a figure under "kind of insurance," and under No. 1 it says \$255.30. Do you know whether the type of insurance covered by that figure was on the building during the time that the lease was in effect?

(Testimony of Louis P. Sparks.)

A. Let's see that letter again, so I can be sure. That is the portion that the Hamburger Realty Company and A. Hamburger & Sons paid of the total fire insurance to increase the coverage from 70 to 100 per cent. Does that answer your question?

Q. Yes. Is it customary for owners of buildings of that type to carry 100 per cent insurance?

A. It is if they wish to be fully protected, and most of them do. [116]

Q. What is your experience with regard to whether or not, as a matter of custom and practice in this vicinity, owners of buildings of that type take out insurance at 100 per cent of its value?

A. Well, I could only testify as to those particular buildings that I am an adviser on, if you wish me to name particular buildings. Is that it?

Q. Do you know what the custom and practice is generally? A. No, I don't.

Q. Do you know how this figure of 70 per cent was ascertained when the insurance was provided for in the lease?

A. It was ascertained by an appraisal.

Q. Was the building, during the period of these leases, protected by wind storm and cyclone insurance?

A. It may have been from time to time, according to the wishes of the lessee, but the lessor had nothing to do with it.

Q. To your knowledge, have you any idea of the amount of wind storm and cyclone damage caused in this area? A. No, I don't.

(Testimony of Louis P. Sparks.)

Q. Would you say it would be very slight?

A. Well, it would depend on whether you were in the midst of a particular storm. Overall is quite a considerable sum in total. [117]

Q. Would you say the type of building as we have here would be likely to suffer with storm and cyclone damage?

A. If we had a cyclone here it probably would suffer considerable damage.

Q. Is it your recollection that we have ever had a cyclone?      A. Not to my knowledge.

Q. Not of the type that would do any damage to this building?

A. Any damage, that is a broad statement. Any wind storm can do damage to a building, it might blow the tower off.

Q. Your quoted price is for full insurance.

A. That is because——

Q. Isn't it? Yes or no.

A. Yes, that is right.

Q. Would you say there would be any reason, or any possibility of the building being completely demolished?

A. There is nothing that will completely demolish a building. It becomes a constructive total loss; the building must be wrecked or changed.

Q. I notice they have flood or water damage insurance. Is it customary for buildings of this sort to carry that type of insurance to the full amount of insurance?      A. It depends.



(Testimony of Louis P. Sparks.)

Q. I am asking you the custom. Do they? [118]

A. Some of them do.

Q. Is it generally the custom?

A. It is customary with my clients.

Q. They insure their buildings to a hundred per cent of their value?

A. They insurance their buildings to a hundred per cent of their value.

Q. For flood and water damage?

A. For flood and water damage. It is principally water damage we are after, not floods, you understand.

Q. What do you mean by water damage? Distinguish water damage from floods.

A. That is breakage of the large pipes and so forth in the store, and the breakage of tanks that may be on top, plumbing tanks, and so on and so forth, or the crashing of the tank through the building.

Q. Do you succeed in selling clients hundred per cent insurance on that proposition?

Mr. Blum: That is objected to as being incompetent, irrelevant and immaterial, as to what he succeeds in doing.

Q. (By Mr. Tonjes): Do you sell clients a hundred per cent protection against flood and water damage?

A. I don't sell insurance; I recommend it.

Q. There is another item on the schedule furnished to [119] you, Mr. Sparks, relating to war

(Testimony of Louis P. Sparks.)

damage insurance. That, of course, would terminate on the cessation of hostilities; wouldn't it?

A. That is right. If there were no other conditions that might warrant it.

Q. What do you mean by subsistence and settlement insurance?

A. That is where the seepage underneath the foundation or the ground underneath the foundation maybe fall and become soft and water seeps in the subterranean condition and the building settles.

Q. Does that often happen after the building has been standing for 20 years, we will say?

A. It occasionally happens; I won't say it often happens.

Q. Do you know if it is the custom and practice of owners of buildings of this type to insure against that sort of a hazard?

A. Your statement of custom and practice—it is only just occasionally a client wishes to be fully insured and has a subsistence and settlement risk.

Mr. Tonjes: I think that is all.

Mr. Blum: That is all.

(Witness excused.)

Mr. Blum: Mr. Eitner. [120]

Whereupon,

ADOLF K. EITNER

called as a witness by and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

(Testimony of Adolf K. Eitner.)

Direct Examination

The Clerk: Will you please state your full name for the record?

The Witness: Adolf K. Eitner.

Q. (By Mr. Blum): What is your business or profession, Mr. Eitner? A. Investments.

Q. Will you tell us where you had your education? A. Yale University.

Q. What years were you there?

A. 1922 to '26.

Q. What was your major at Yale?

A. Economics and history, math.

Q. Upon your graduation from Yale, where did you go in the business?

A. I went into business in New York with the National City Company.

Q. In the investment portion of their business?

A. That is correct.

Q. How long were you with the National City Company? A. Until 1933. [121]

Q. What were your duties with the National City Company?

A. The duties were of a general nature, largely statistical work in analyzing securities, appraising them.

Q. Do you know the size of the National City Company?

A. I do not remember. It was fairly sizable.

Q. What is the nature of its business?

A. It was an underwriter and dealer in securities.



(Testimony of Adolf K. Eitner.)

Q. In the parlance of the investment business, would you say they had a large volume of business or a small volume?

A. They had a large volume of business, probably one of the largest in the country up to the time they expired.

Q. When you left the company, where did you go?      A. I went with Blythe & Company.

Q. How long have you been with them?

A. Since 1933.

Q. Are you with them now?

A. I am with them now, yes.

Q. You have been with them continuously since 1933?      A. That is correct.

Q. What were your duties with Blythe & Company?

A. At the present time I am sales manager there, and that covers a pretty much of a cross section of the statistical work, analytical work, analysis work; all the sort of things that go on in an investment house.

Q. Is the statistical and analytical work in connection [122] with the appraisal of securities?

A. That is correct.

Q. Your work with the statistical department of Blythe & Company and with the National City Company, were you called upon to appraise various securities?      A. Yes.

Q. In that respect, were they securities which either of the companies were undertaking to underwrite?      A. Yes.

(Testimony of Adolf K. Eitner.)

Q. In connection with your appraisal of securities, did that cover both listed and unlisted securities? A. It did.

Q. Did it cover as well securities of closed corporations? A. That is correct, yes.

Q. Is Blythe & Company a national investment house? A. Yes, it is.

Q. How many branches does it have in the United States, if you know?

A. Well, there are five major offices and quite a number of what you might term secondary offices. I think the total runs around 30 or thereabouts.

Q. How many offices does it have in California?

A. The two major offices in California are Los Angeles and San Francisco. [123]

Q. You are in which office?

A. In the Los Angeles office.

Q. In connection with your appraisal of securities and analysis of them, did you have both minority interests and major interests in the stock of the corporation?

A. Yes. I would say that almost all conceivable circumstances and conditions that surrounded a security have come up at one time or another in appraisal work where we are considering buying either a small or large block, either for public or private placement, or otherwise.

Q. Including the securities which would have to be especially placed in order to find a purchaser?

A. Yes.

Q. Now, Mr. Eitner, I believe you have been

(Testimony of Adolf K. Eitner.)

handed copies of the stipulation of facts in this case?      A. Yes, sir.

Q. You have been handed copies of Exhibits 1 to 9, inclusive?      A. That is correct.

Q. I show you the stipulation of facts with Exhibits 1 to 9, inclusive, and ask you if you will look at it and see if those are the same exhibits and stipulations you have a copy of.

A. These are the same.

Q. Assume, if you will, that Belle Alice Hamburger Nathan [124] died on October 13, 1940.

Assume further that the Executors of the Last Will and Testament of said decedent elected to have the assets of her estate valued on the optional date provided by law, to-wit, October 13, 1941.

Assume further that at the time of said decedent's death she was the owner of 104.167 shares of the capital stock of the Hamburger Realty Company and that her estate was the owner thereof on the basic date, to-wit, October 13, 1941.

Assume further that on said basic date there was issued and outstanding 1000 shares of the capital stock of Hamburger Realty Company, with a par value of \$1000.00 a share, which said shares were common stock and were owned as follows:

104.167 shares by Petitioners herein;

104.167 shares by Evelyn Hamburger;

104.167 shares by Jennie H. Marx, or by a trust created by her;

291.666 shares by David A. Hamburger Corporation;



(Testimony of Adolf K. Eitner.)

291.666 shares by David A. Hamburger as Trustee of the Estate of M. A. Hamburger, deceased; and

104.167 shares by A. Hamburger & Sons, Inc.

Assume further that on the basic date there was no other shares of stock, either common, preferred, or otherwise, and no bonds, of the Hamburger Realty Company outstanding.

Assume further that no sales were ever made of any shares of stock of the Hamburger Realty Company and that the [125] said Hamburger Realty Company is a closed family corporation.

Assume further that on the basic date the President, General and Executive Manager of said corporation was David A. Hamburger, aged 84 years; that the Vice-President of said corporation on said basic date was Evelyn Hamburger, aged 72 years, and that the Secretary-Treasurer of said corporation was P. L. Nathan, aged 76 years; that Jennie H. Marx, one of the stockholders of said corporation, was 81 years of age.

Assume further than for a period in excess of three years prior to the basic date the said David A. Hamburger had been ill and almost continuously confined to his bed.

Assume further that for many years prior to the basic date the said David A. Hamburger and the said P. L. Nathan did not speak to each other and that the said David A. Hamburger and the said Evelyn Hamburger and Jennie H. Marx were on

(Testimony of Adolf K. Eitner.)

inharmonious terms and that each of them, together with the decedent herein, had their own and separate attorneys advising them in connection with the affairs of said corporation.

Assume further that the brothers and sisters above mentioned have engaged in quite serious and severe litigation among and between themselves.

Assume further that upon the death of the said David A. Hamburger, Evelyn Hamburger, and Jennie H. Marx, the control of said corporation and the management thereof will pass into the hands of the children of David A. Hamburger, none of whom [126] ever had any business training or experience nor ever worked for or in said corporation. That neither the Articles of Incorporation nor the By-Laws of the said Hamburger Realty Company provide for cumulative voting of the stock.

Assume further that the assets of the Hamburger Realty Company, their book value, and their fair market value are as shown in Exhibit 1, heretofore introduced into evidence, which said Exhibit 1 is herewith shown to you.

Assume further that the liabilities of said Hamburger Realty Company are as shown on said Exhibit 1 and that the net worth of said company is as shown on said Exhibit 1 and that the fair market value of said net worth is \$3,927,153.64, or an asset value per share of \$3,927.15.

Assume further that the profit and loss statements of said Hamburger Realty Company for the years

(Testimony of Adolf K. Eitner.)

1936 to 1941, inclusive, are as shown on Exhibit 2, heretofore introduced into evidence.

Assume further that dividends declared and paid for the years 1936 to 1941, both inclusive, are as shown in Exhibit 3, heretofore introduced into evidence.

Exhibits 2 and 3 are herewith shown to you.

Assume further that on or about the 30th day of March, 1923, there was in existence a lease of the Hamburger Realty Company as lessor to A. Hamburger & Sons, Inc., as lessee, providing for a stipulated rental of \$250,000.00 per year. [127]

Assume further that on the said 30th day of March, 1923, A. Hamburger & Sons, Inc., entered into a lease with the May Department Stores Company, subleasing the property situated on Broadway, Eighth and Hill Streets in the City of Los Angeles, California, to the said The May Department Stores Company for a period of 20 years for a total rental of \$10,355,625.60, payable at the rate of \$43,148.44 per month. That on the basic date said lease had one and one-sixth years unexpired term.

Assume further that on the 30th day of March, 1923, the Hamburger Realty Company and the May Department Stores Company entered into a lease for the aforesaid premises, the term of which lease was to begin January 1, 1943, and continue for a period of 30 years at a total rental of \$9,000,000.00, payable \$25,000.00 per month.

Assume further that on December 31, 1942, the



(Testimony of Adolf K. Eitner.)

aforesaid lease from Hamburger Realty Company to A. Hamburger & Sons, Inc., and the aforesaid lease from A. Hamburger & Sons, Inc., to the May Department Stores Company, terminated.

Assume further that in accordance with the terms of the aforesaid leases, the cost to the Hamburger Realty Company in order to protect itself against the hazards of fire, lightning, windstorms, explosions, earthquakes, and other types of like hazards, and including the loss of rental income insurance would be the sum of \$10,487.38 until 1968 and \$20,-395.78 per [128] year from and after the year 1968, and in default of Hamburger Realty Company taking out such types of insurance at said cost, it would have to assume such hazards incident to the foregoing.

Assume further that the Hamburger Realty Company is a corporation organized and existing under the laws of the State of California, with its principal office and only place of business located in the County of Los Angeles, State of California.

Assuming all of the foregoing facts, do you have an opinion as to the value of the 104.167 shares of the capital stock of the Hamburger Realty Company on the basic date?           A. I have.

Q. Before going to the value, you have had a copy of this question before?

A. Yes, I have had a copy of the question.

Q. What, in your opinion, is the value of the

(Testimony of Adolf K. Eitner.)

104.167 shares of the capital stock of the Hamburger Realty Company, on the basic date?

A. \$2,000.00 per share.

Q. \$2,000.00 per share. In arriving at that value, Mr. Eitner, did you take into account such factors as the assets, value of the stock?

A. Yes, I did. I think I took into consideration all of the factors that are represented in the financial statement [129] and earnings history, dividend history, general background.

Q. Lack of liquidity of the stock? A. Yes.

Q. Minority interests?

A. Minority interests.

Q. Family voting power? A. Yes.

Q. The inharmony of the management?

A. Yes.

Q. The age of the management? A. Yes.

Mr. Tonjes: Will you answer some of those questions? I don't hear the answer.

The Witness: I gave consideration to all of those factors he has enumerated.

Q. (By Mr. Blum): The type of underlying assets shown in the balance sheet? A. Yes.

Q. In arriving at the value, did you have in mind any particular type of purchaser that would be interested in the securities, whether it would be a purchaser that would want to buy the block or a purchaser that would want to buy a few shares?

A. I had in mind it would be a purchaser that wanted [130] to buy the block. The reason for that,

(Testimony of Adolf K. Eitner.)

I didn't think it was practical to place the stock in small amounts here and there. I doubt if it could have been done.

Q. In arriving at the value, did you take into consideration whether this would be an investment security or speculative security?

A. I considered it an investment security.

Q: What is your definition of a speculative security, as distinguished from an investment security?

A. In the case of an investment security, the buyer is buying for the income which he has in contemplation, without the object of any capital gain.

In the case of speculative securities the income factor may be present, but very often the capital gain factor is dominant.

Q. With respect to the sale of the 104.167 shares of the Hamburger Realty Company, would it be your opinion the market would be a limited market or an unlimited market?

A. It would be a very limited market.

Q. Do you have in mind, from your experience in the investment field, any such person or group of persons who would be interested in purchasing the 104.167 of the Hamburger Realty?

A. I think, as a group, the most logical purchasers might have been found in some of these fraternal organizations [131] or insurance companies which are located, to the greatest extent, throughout the middlewest.



(Testimony of Adolf K. Eitner.)

Q. Such institutions being either tax exempt or in a——

A. I don't know what their tax status would be.

Q. Is an investment or speculation in a family corporation, closed corporation deemed in investment circles to be a desirable type of investment or speculation, or undesirable?

Mr. Tonjes: Will you read the question?

(The question was read.)

The Witness: It is undesirable largely for the lack of marketability, which it has.

Q. (By Mr. Blum): What was the condition of the market generally on the basic date?

A. By condition of the market I assume you mean the return that an investor could find.

Q. That is correct.

A. From investment type securities?

Q. That is right.

A. It varied. I have made a few notes here of prices as they were around the date October 13, 1941, for some representative stocks. American Telephone and Telegraph showed a return on its dividends of 5.84 per cent; Pacific Gas and Electric, 8.35; Consolidated Edison, 10 per cent; International Harvester, 6 per cent; and Standard of California, 6.5 per cent. [132]

Chesapeake & Ohio, 9.75 per cent almost; Union Pacific, 8 per cent; Pennsylvania, 9 per cent; May Department Stores, which is interesting because

(Testimony of Adolf K. Eitner.)

they are on the list, was 5.61; Bullock's, another local store, was about 5.88, almost 6 per cent.

Q. Now, in your opinion, would the purchaser look with respect to purchasing the stock of the Hamburger Realty Company, the 104.167 shares we have involved here, as compared with purchasing or investing a like amount of money in one of the securities you have just referred to?

A. These securities that I have referred to have all the attributes of marketability. The easy availability of information on them, it is possible to check and see how they are progressing and what is happening. They could all be considered to more or less set the rate for that type of investment at the time.

I think that the purchaser, in buying the Hamburger Realty stock, would have wanted to obtain a greater return to compensate him for the undesirable features which are the closed corporation, the family corporation, the unharmonious relationship between what would then be the other stockholders; he would be a stranger in a family fight. Also, the lack of market and all the other features which we have already touched upon. Proceeding from that—shall I proceed from that point?

Q. Yes. [133]

A. The exhibits carry the earnings and the dividend record. The earnings for the five years, '37 to '41, inclusive, were \$166.00 a share. The dividends for the five years was \$172.00 a share.

There was a declining trend in the earnings which

(Testimony of Adolf K. Eitner.)

was obviously due to the increased tax item, as it shows up in the statement of receipts and expenditures.

In 1941 the earnings were \$151.44 a share, and the dividends paid \$149.60.

You have another factor to consider here. To touch on the taxes, they had increased from \$28,000.00 in 1937 to \$70,000.00 in 1944; Federal Income Taxes. There is another feature——

The Court: 1944 or 1941?

The Witness: 1941. I am sorry. There is another feature, and that is that beginning with January 1, 1943, the company is assured of obtaining \$50,000.00 a year or \$50.00 a share of additional income as a result of the setup in the May lease. It will not enjoy all of that income because its taxes would be—its tax bill would be increased as a result.

On the basis and conditions as they were then, it is reasonable to assume, I think, that they might have retained \$30,000.00 or 60 per cent of those earnings, which would have been available after that date to pay out in dividends. If you add back your \$30.00 to the 1941 earnings, which give [134] account to the current effect of taxes, you get a projected earning picture there after 1943 of about \$180.00 a share.

It had been the practice of the company, and there was no reason to assume any differently, they would pay out a hundred per cent of that in dividends. So you could assume there you had \$180.00



(Testimony of Adolf K. Eitner.)

dividend stock, in view of the going rate on other security, which I have enumerated here, have ranged all the way from 5.61 to 10 per cent. I have capitalized these earnings and dividends, using a 9 per cent factor, which brings you to \$2000.00 a share, 11 1/9th.

Q. The increase of the 9 per cent over the others being to take care of the——

A. To offset the undesirable features you have to take into account here that the 9 per cent capitalization is no greater than could you have obtained from Consolidated Edison or from General Motors at that time on the then going dividend rate or from Chesapeake & Ohio or Pennsylvania Railroad. It is greater than you could obtain from May Stores or International Harvester, Pacific Gas and Electric, in varying degrees. But it measures what, I believe, the purchaser would have required under those conditions to interest him, and I believe that it is on a reasonable basis, so that the seller would have found it reasonable under those conditions.

Q. What is your understanding of the meaning of the term "fair market value"? [135]

A. Fair market value is the value at which a willing and informed buyer and a willing and informed seller can have a meeting of minds as to the price.

Mr. Blum: Would it simplify the matter, your Honor, if we concentrated on each separately? For example, permit the respondent to cross-examine on this portion of it? Or do you want me to continue

(Testimony of Adolf K. Eitner.)

with the other stock, and then let him cross-examine on it all?

The Court: I think you might as well let the witness go ahead and testify. You gentlemen won't be confused. He won't be confused. If I have any confusion it will be removed when I re-read the record.

Mr. Tonjes: I would, if it meets with your Honor's approval, like to examine the witness now. The two corporations have a lot of similar matters. I have had this Realty Company in my mind, and I think it would be more convenient for me to cross-examine.

The Court: I have no desire one way or the other. If you gentlemen wish to agree upon another method of proceeding, you may do so; I have no objection.

Mr. Blum: It is satisfactory with me to have cross-examination now.

The Court: Very well. You may cross-examine on the Realty Company value. [136]

#### Cross-Examination

By Mr. Tonjes:

Q. I believe you stated you considered the earning capacity of the corporation? A. Yes, sir.

Q. How did you arrive at what you contemplated to be the earning capacity of the corporation?

A. I took the 1941 earnings and took the stepped up income, which would be received in 1943, less taxes, at the rate of 40 per cent, and projected the

(Testimony of Adolf K. Eitner.)

\$180.00 a share as a reasonable expectation under conditions as they then existed in both earnings and dividends.

Q. Do you know what rate of taxes the corporation paid for 1941?

A. It is evident in the exhibits, I believe. 1941 they had receipts, after expenses, of \$221,000.00, and their tax was \$70,000.00.

Q. I see.

A. Which indicates a 30 per cent rate paid in 1941. In 1941, that far along in the year, we were already having discussions of excess profits taxes, increased taxes.

Q. By 1941 there had been a considerable step up in the taxation rate at the time?

A. That is correct.

Q. I think that was due largely to the anticipation [137] perhaps of war and preparation and so forth in this country; isn't that true?

A. I would assume that was the case.

Q. It might reasonably be assumed, would it not, that when that had run its course there would be a reduction of taxation, too?

A. I don't think that is a reasonable assumption, no.

Q. You don't think so?

A. No. I am talking now about your basic 40 per cent rate.

Q. Yes.

A. And generally higher level of rates for an indefinite period of years than existed in 1941.



(Testimony of Adolf K. Eitner.)

Q. Now, Mr. Eitner, have you ever analyzed any corporations that were engaged primarily in holding real properties and renting them? A. Yes.

Q. Were they located in and about Los Angeles?

A. I am just trying to recall. We have been in quite a number of real estate situations and followed them both on the Pacific coast and other parts of the country. And in the general run of business you are in contact with them quite often.

Q. Did you ever analyze any corporation which owned any properties similar to the May Department Stores, and under a long-term lease? [138]

A. Yes. You have the securities of companies which have ground rentals. I assume, if I may, you are trying to get at the point as to how I regard that major asset, which practically represents the book value. I regard it very highly.

Q. No, that isn't exactly my point, Mr. Eitner. I am wondering why you used these corporations which were engaged in various commercial activities, the railroads and the like of that, in order to find a rate on which to base a capitalization.

A. You are talking now about the factor of continuity of income. I used American Telephone & Telegraph Company, which has paid \$9.00 for a great many years, and I think is generally expected to pay it. Pacific Gas and Electric Company established a \$2.00 rate for many years before and has paid it consistently.

Consolidated Edison had just reduced their rate to \$1.60, which is the rate I used; and they have

(Testimony of Adolf K. Eitner.)

maintained that rate. I did take into definite account the reasonable ability of these dividends.

Q. They were all from corporations engaged in various types of business, one furnishing transportation, another one furnishing merchandise?

A. That is correct.

Q. Did you analyze any corporations which were engaged primarily in holding real property for rental? [139]

A. I did not, not knowing any security which is in the general market, that is, actively traded, that would be directly comparable.

Q. So then why do you use the 9 per cent rate of the highest return to this real estate corporation?

A. That is not the highest return in these comparisons. It is my appraisal that the going rate from a good investment that was not prime at that time was around 6 to 7 per cent in a range. You have to be in a range. That the undesirable features in this case would demand a considerably higher rate on the purchaser.

Q. Did you make any inquiry into what rate of return real estate was producing in and about the City of Los Angeles?

A. I did not, not believing that to be pertinent in relation to the value of the stock.

Q. This corporation's entire activity was confined to holding real estate and collecting rents; was it not?

A. It was, but the buyer of the stock of Ham-

(Testimony of Adolf K. Eitner.)

burger Realty is not the buyer of real estate in Los Angeles.

Q. You don't know what the average return of real estate is, in other words?

Mr. Blum: Objected to as being incompetent, irrelevant and immaterial whether he knows or not. We are not appraising real estate.

The Court: He has answered. He says he does.

Q. (By Mr. Tonjes): You say you do?

A. No.

The Court: I misunderstood.

The Witness: I would say in a general way. I wouldn't assume to know.

Q. (By Mr. Tonjes): Did you make a search at all to find any corporation at all engaged in the business of holding real estate in order to ascertain their rate of return on their stock?

A. Yes, sir, I looked at the field of real estate bonds, the securities of real estate companies which were in the market at that time and were in general pyramided and were not a true comparison. To use those would probably push the value on this way down.

You have the case of office building bonds. You have the Russ Building in San Francisco which had some 6 per cent bonds due in 1951, then outstanding, which were worth around ninety in the market.

Q. What would the rate be?

A. 6 at ninety with ten years to run would be, I would say, about right around 6.50 to 6.60 yield.



(Testimony of Adolf K. Eitner.)

Q. I have a little difficulty in understanding what you use these corporations as in establishing a rate which you would consider in capitalization. [141]

Assume for a moment that the only asset that the Hamburger Realty Company had was a building which was producing \$5,000,000.00 a year—I mean was producing an annual rental of \$300,000.00 a year, and that building was leased to a corporation of national reputation, May Company,—

A. That is right.

Q. —and I think if that is true you could reasonably assume the May Company would continue to pay its rent.

A. I have a high regard for the May Company.

Q. For the duration of the lease.

A. That is right.

Q. And that would be a high type of investment if one individual owned that; would it not?

A. You are talking about the lease?

Q. Yes. A. That is correct.

Q. That would be a high type of investment; would it not? A. That is right.

Q. Now, if one man owned that, would you say that you would capitalize that \$300,000.00 at a 9 per cent rate?

Mr. Blum: Objected to as being incompetent, irrelevant and immaterial. The value of the May Company Building has been stipulated to in the stipulation of facts. We are not trying to determine what the value of \$300,000.00 a [142] year is. We

(Testimony of Adolf K. Eitner.)

are trying to determine what the fair market value of stock is in corporations,—

The Court: This is cross-examination. I think I would prefer to allow them a little latitude, even though I have some doubt as to the materiality of the testimony.

Mr. Tonjes: This is expert testimony.

The Court: You may proceed. I will overrule the objection.

The Witness: Your question is now whether I would capitalize the income from the May Company lease on a 9 per cent basis?

Q. (By Mr. Tonjes): Yes.

A. The answer is no, I would not. I would capitalize a little lower rate.

Q. At a lower rate? A. Yes.

Q. At what rate, would you say?

Mr. Blum: That is objected to as being incompetent, irrelevant and immaterial.

The Court: I don't think it is very material. I will sustain the objection.

The Witness: I would say a 6 per cent rate—

Mr. Blum: It has been objected to.

Mr. Tonjes: All right. [143]

The Witness: I am sorry.

Mr. Tonjes: If your Honor please, I think I am entitled to inquire into these matters on cross-examination.

The Court: I am going to allow you considerable latitude. He answered the question. We will let it stand.

(Testimony of Adolf K. Eitner.)

Mr. Tonjes: I understood the objection would be sustained.

The Court: I did. He has answered the question, so we will let the answer stand.

Mr. Tonjes: Will you read the last question and answer, please?

The Court: The substance of it was he would capitalize a \$300,000.00 item on those facts on a 6 per cent basis. Isn't that correct?

The Witness: Yes.

Q. (By Mr. Tonjes): How would you value the stock of the corporation in those circumstances?

Mr. Blum: Objected to as ambiguous.

The Witness: What circumstances are you enumerating?

Q. (By Mr. Tonjes): Under the circumstances we have present in this case.

Mr. Blum: Which corporation, the May Company?

Mr. Tonjes: No, the Hamburger Realty Company.

The Witness: I understood your question to be a [144] valuation of the lease, is it? Is that correct?

Q. (By Mr. Tonjes): That is right.

A. Now you are turning the lease into a corporation and you are asking me to value the stock of the corporation under what circumstances?

Q. Under the circumstances we have present here.

A. I have indicated a 9 per cent factor in my belief.



(Testimony of Adolf K. Eitner.)

Q. What factor, if you can point out, or what circumstances bring you to conclude that a 6 per cent factor would be reasonable under one circumstance and a 9 per cent in the other?

A. The factors that control are the fact that you are talking about a minority interest in the corporation. It is a family corporation. It is a closed corporation. There is no market for the stock. The buyer has to buy the stock with the prospect he will sit with it or be put to considerable trouble to find another buyer should he wish to liquidate.

Q. In your consideration or the use of the term "fair market value," is it your understanding that you have to have a buyer available?

A. It is my understanding that it is theoretical and academic to have a meeting of the minds between a theoretical buyer and a theoretical seller, because there has been no transaction that has taken place. [145]

Q. So you don't necessarily have to have an actual buyer in order to have a fair market value?

A. Yes. I am supposing that if it were up to me to find a place for this stock, at what price could I find a place for it?

Q. That is right. You don't necessarily have to have an actual buyer in mind?

A. Oh, no, no.

Mr. Tonjes: I think that is all.

The Court: Off the record.

(Discussion off the record.)

(Testimony of Adolf K. Eitner.)

The Court: On the record.

We will suspend at this time until 2:00 o'clock this afternoon.

(Whereupon, at 12:10 o'clock p.m., a recess was taken until 2:00 o'clock p.m. of the same day.) [146]

Afternoon Session—2:00 P.M.

Whereupon,

ADOLF K. EITNER

resumed his testimony as follows:

Redirect Examination

By Mr. Blum:

Q. Mr. Eitner, before proceeding to the A. Hamburger & Sons, Inc., could you tell us whether the securities market on the basic date, October 13, 1941, was on an upward trend or a downward trend?

A. It was on a slightly downward trend.

Q. So that a person with money to invest at that time could have reasonably expected to have invested money at some later date and obtain a higher yield on the securities which you referred to, that is, American Telephone & Telegraph and the other stocks?

A. Well, they all subsequently sold lower. I don't know to what extent you could have relied to their selling lower. The trend was downward at the time, but not sharply so. It didn't turn off badly until after Pearl Harbor.

Q. Directing your attention to the——

(Testimony of Adolf K. Eitner.)

Mr. Tonjes: May I have one further question on cross-examination?

Mr. Blum: Yes.

Mr. Tonjes: Did you also inquire into the trend [147] of the market with respect to real properties in and about Los Angeles at that time?

The Witness: No, sir.

Mr. Tonjes: That is all.

Q. (By Mr. Blum): Directing your attention to the stock of A. Hamburger & Sons, Inc., assume, if you will, that Belle Alice Hamburger Nathan died on October 13, 1940.

Assume further that the Executors of the Last Will and Testament of said decedent elected to have the assets of her estate valued on the optional date provided by law, to wit, October 13, 1941.

Assume further that at the time of said decedent's death she was the owner of 425.817 shares of the capital stock of the A. Hamburger & Sons, Inc., and that her estate was the owner thereof on the basic date, to wit, October 13, 1941.

Assume further that on said basic date there was issued and outstanding 3774.183 shares of the capital stock of A. Hamburger & Sons, Inc., which said shares of stock were common stock and were owned as follows:

425.817 shares by Petitioners herein;

425.817 shares by Evelyn Hamburger;

425.817 shares by Jennie H. Marx, or by a Trust created by her;



(Testimony of Adolf K. Eitner.)

1248.366 shares by David A. Hamburger Corporation; and [148]

1248.366 shares by David A. Hamburger as Trustee of the Estate of M. A. Hamburger, deceased.

Assume further that on the basic date there were no other shares of stock, either common, preferred, or otherwise, and no bonds of the A. Hamburger & Sons, Inc., outstanding.

Assume further that no sales were ever made of any shares of stock of A. Hamburger & Sons, Inc., and that the said A. Hamburger & Sons, Inc., is a closed family corporation.

Assume further that on the basic date the President, General and Executive Manager of said corporation was David A. Hamburger, aged 84 years; that the Vice-President of said corporation on said basic date was Evelyn Hamburger, aged 72 years; and that the Secretary-Treasurer of said corporation was P. L. Nathan, aged 76 years; that Jennie H. Marx, one of the stockholders of said corporation, was 81 years of age.

Assume further that for a period of several years prior to the basic date the said David A. Hamburger had been ill and almost continuously confined to his bed.

Assume further that for many years prior to the basic date the said David A. Hamburger and the said P. L. Nathan did not speak to each other and that the said David A. Hamburger and the said

(Testimony of Adolf K. Eitner.)

Evelyn Hamburger and Jennie H. Marx were on in-harmonious terms and that each of them, together with the decedent, had their own and separate attorneys advising them in connection with the affairs of said corporation. [149]

Assuming further that the brothers and sisters above mentioned have engaged in quite serious and severe litigation among and between themselves.

Assume further that the testimony you heard in court this morning, given by Mr. Mitchell and Mr. Milliken, is true as to the directors opposing the proposal of any other directors with respect to investments and changes of properties and management policies.

Assume further that upon the death of the said David A. Hamburger, Evelyn Hamburger, and Jennie H. Marx, the control of said corporation and the management thereof will pass into the hands of the children of David A. Hamburger, none of whom have ever had any business training or experience nor ever worked for or in said corporation, with the exception of the daughter, who, for a period of time was on the board of directors, but neither the Articles of Incorporation nor the By-Laws of the said A. Hamburger & Sons, Inc., provided for cumulative voting of the stock.

Assume further that the assets of the A. Hamburger & Sons, Inc., their book value, and their fair market value, are as shown in Exhibit 4, heretofore introduced into evidence, which said Exhibit 4 is herewith shown to you.

(Testimony of Adolf K. Eitner.)

Assume further that the liabilities of said A. Hamburger & Sons, Inc., are as shown on said Exhibit 4, and that the net worth of said company is as shown on said Exhibit [150] 4; that the fair market value of said net worth is \$3,475,516.03, or an asset value per share of \$920.86, except no fair market value is included for the 104.167 shares of the Hamburger Realty Company owned by A. Hamburger & Sons, Inc.; no fair market value has been assigned to the 1 1-6th years' rental to be received on the A. Hamburger & Sons' lease to May Company.

Assume further that the profit and loss statements of said A. Hamburger & Sons, Inc., for the years 1936 to 1941, inclusive, are as shown on Exhibit 5, heretofore introduced into evidence.

Assume further that the dividends declared and paid for the years 1936 to 1941, inclusive, will be as shown in Exhibit 6, heretofore introduced into evidence; Exhibits 5 and 6 having both been shown to you.

Assume further that on or about the 30th day of March, 1923, there was in existence a lease of the Hamburger Realty Company to A. Hamburger & Sons, Inc., as lessee, providing for a stipulated rental of \$250,000.00 per year.

Assume further that on said 30th day of March, 1923, A. Hamburger & Sons, Inc., entered into a lease with the May Department Stores Company, subleasing the property situated on Broadway, Eighth, and Hill Streets in the City of Los Angeles, California, to the said May Department Stores



(Testimony of Adolf K. Eitner.)

Company for a period of twenty years for a total rental of \$10,355,625.50, payable at the rate of \$43,-148.44 per month. That on the [151] basic date said lease had one and one-sixth years unexpired term.

Assume further that on December 31, 1942, the aforesaid lease from Hamburger Realty Company to A. Hamburger & Sons, Inc., and the aforesaid lease from A. Hamburger & Sons, Inc., to the May Department Stores Company terminated.

Assume further that the A. Hamburger & Sons, Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and only place of business located in the County of Los Angeles, State of California.

Assuming all of the foregoing facts, do you have an opinion as to the value of the 425.817 shares of the capital stock of the A. Hamburger & Sons, Inc., on the basic date, to wit, October 13, 1941?

A. Yes, I do.

Q. What is your opinion as to the fair market value of said stock on said date?

A. I believe the fair market value is \$337.30.

Q. In arriving at that value, what factors did you take into consideration?

A. I took into consideration the fact that A. Hamburger & Sons was a closed corporation and was further a family corporation; that there was an unharmonious situation among the stockholders and among the directors. [152]

I took into consideration the condition of the assets, the earnings' history, the dividend history, the

(Testimony of Adolf K. Eitner.)

prospective earnings as a result of the loss of the May lease and the Hamburger lease as well in a little over a year; and all other factors that one might reasonably take in appraising the value of the stock.

Q. Now, in taking into account the earnings' history and the dividend history of the company with respect to the loss of the approximately two hundred seventy-six thousand odd dollars upon the termination of the May Company lease and the Hamburger Realty Company lease, and considering that for a year and two months you would have that gross income coming into the company but thereafter you would not, how did you treat that?

A. I might not hear that dividend distributions have not been paid out of earnings for the 1941 year. They would have been paid, according to the practice of the company, in February or March of 1942 in one lump sum, and from the 1942 earnings which were still before the expiration of the Hamburger lease in February or March of '43.

I took both of those—let me see how it works here. The 1941 earnings were \$66.60. Assuming those earnings are repeated again in 1942 you have an expected dividend in '42 and again in '43 of \$66.60 each. Discount the March, 1942, dividend on a 6 per cent basis and the March, 1943, dividend on [153] an 8 per cent basis and you arrive at a value of that expected dividend income in those two immediately following years of \$122.66.

Q. Per share?

(Testimony of Adolf K. Eitner.)

A. Per share. Which is a part of the price of \$337.50.

Q. In your opinion, Mr. Eitner, would the stock of the A. Hamburger & Sons, Inc., be considered an investment security or a speculation security?

A. I think it would have been considered more speculative than investment.

Q. In your opinion, would the 425.817 shares here under consideration have to be sold as a block to one, or a group of purchasers, or would it have been parceled out in small share lots?

A. I think in this instance it might have happened either way, although the latter, that is, parceling it out, is possibly the more likely of the two.

Q. In arriving at the value for the A. Hamburger & Sons Company stock that you did, did you consider the factor of liquidation of this company and the consequent recovery of the asset value by the stockholders?

A. I assumed that from the general make-up of the corporation, in spite of the fact that there was no history or apparent indication of liquidation, there was a speculative chance that at some undeterminate future date some action in that [154] direction might have been taken which obviously would have lent speculative flavor had the assets remained as they were and not dissipated in the interim.

Q. Did you feel there was more likelihood of such a liquidation and recovery of the asset value by the stockholders of the A. Hamburger & Sons,



(Testimony of Adolf K. Eitner.)

Inc., stock than the Hamburger Realty Company stock on the basic date?      A. Yes, I did.

Q. As I understand it, included in your value of \$337.50 is this \$122.66 representing the dividends assignable to the May Company lease for the 1942 and 1943 period, together with the other income for that period; is that correct?

A. That is correct, together with the other income.

Q. Together with the other income?

A. That is correct.

Q. With respect to the remaining, that would be \$215.00 a share, roughly, of your \$337.00? How was that arrived at?

A. That was arrived at by extracting from the earnings for the 1941 period, which were \$66.60, the probable loss in income after taxes, as a result of the loss of the May lease. That figure of \$267,000.00 a year is equal approximately to \$70.00 a share on the capitalized A. Hamburger & Sons stock. If 40 per cent of that is paid out in taxes, \$42.00 is retained, would be retained as earnings. In other words, they would give up—well, let's put it this way: taxes would [155] share in the loss as well as the stockholders, so you would deduct the \$42.00 from your \$66.60 and arrive at a projection on that basis equal to \$24.60 a share, roughly \$25.00.

Capitalizing that on a 10 per cent yield factor and on a ten times earning basis, the company had as well paid out all its earnings. You arrive at a figure of \$250.00. That, however, is paid

(Testimony of Adolf K. Eitner.)

for earnings and dividends which you are not going to enjoy for the two years because you have already taken those into account.

So discounting that on a 6 per cent basis would mean a discount factor there of \$36.00 and would result in \$214.75, \$215.00 roughly. It approximates \$337.50.

Q. Can you tell us, Mr. Eitner, on the basic date what the composite Dow Jones average yield rate was?

A. I believe it was about a little over 6 per cent on the industrial averages, and it ran either 7 or 8 per cent, right in that range, on rails and utilities. I am not certain of the exact, or I don't recall the exact figure on the latter. I may have it here. I doubt it. No, I haven't it. I think 7.34 on one and eight and a fraction on the other, as I remember it.

Q. Do you know what the averages of the Dow Jones were, the selling averages?

A. Around a hundred twenty-two, I believe.

Q. At that date? A. Yes. [156]

Mr. Blum: That is all.

### Recross-Examination

By Mr. Tonjes:

Q. Mr. Eitner, you regarded the A. Hamburger & Sons stock as an investment security, did you say?

A. No, I said that the speculative factors were more dominant than the investment factor in the security.

(Testimony of Adolf K. Eitner.)

Q. You have examined Exhibit 4 attached to the stipulation of facts?

A. Is that the balance sheet?

Q. Yes.

A. With the values. Yes, sir, I have. I have it before me.

Q. Just what do you mean when you say a speculative investment?

A. Are you talking now about Exhibit 4 or about the stock?

Q. I am talking about the stock of Hamburger and Company and its relation to your characterization of its being the stock of the corporation being a speculative investment.

A. In my opinion.

Q. You say it is? A. Yes.

Q. Now, just how did you arrive at that conclusion? [157]

A. You have the previous testimony regarding the makeup of the assets. You also have the previous testimony regarding the absolute stagnation of the management, nothing was being done with the assets. Maybe I shouldn't be that strenuous. No good business practice was being taken in the administering of the assets to have them produce on the basis that they might under good business management.

With that management in there and no indication there would be a change in that, your speculation is a fact, that at some indefinite, indeterminate future date there will be a change that will permit you to gain more than you had originally anticipated.



(Testimony of Adolf K. Eitner.)

the stock of a corporation that holds Government Bonds.

Q. That is a family holding corporation, you appreciate that.      A. That is correct.

Q. Could you explain that a little more, bearing in mind this is a personal family holding corporation? [160]

Mr. Blum: By "holding corporation" are you speaking of it in the sense they are holding the assets or in the sense of the Internal Revenue Code?

Mr. Tonjes: In the sense they are holding the assets, not in the sense of the technical description of a holding company.

The Witness: I am sorry. I don't quite follow what you mean. Will you develop that point? Do you mean by that with respect to the present stockholders or this block of stock that is seeking a buyer at a price?

Q. (By Mr. Tonjes): Well, I mean the value of the stock of the corporation generally. Let's start from scratch again. This is, I believe, a corporation which is not engaged in business in the common accepted term; isn't that true?

A. I think that is true, yes.

Q. It doesn't buy anything or sell it or manufacture?      A. It hasn't been.

Q. The purpose of it is to hold property, collect the fruits and benefits and profits?

A. And administer.

Q. Distribute the income.

A. That is correct.

(Testimony of Adolf K. Eitner.)

Q. Now, a corporation that functions in that manner would be expected to produce income based on the value of the [161] assets it owned; isn't that true? A. That is correct.

Q. If it held a large block of what might be called speculative investments, which at the present time are producing a high return, you would have then a comparatively low income with great security; isn't that true?

A. No, I think you are contradicting yourself; aren't you? You said if you have a corporation that has speculative securities that produce high income, that you would have a low income with greater security.

Q. I am wrong if I stated that, yes. You would have a high income. A. That is correct.

Q. And as a result of that, you would naturally expect a high rate of return?

A. That is correct.

Q. Would you say that is the situation in this Hamburger & Sons, Inc.?

A. Mr. Tonjes, I believe we have to reduce this to a per share basis in the relation to the price, if you will permit me to do so, in talking about these assets you are talking about now.

These Government Bonds and the block of \$100,000.00 of Municipals they have are equal to about \$271.00 a share. They have about \$33.00 a share of stocks, good representative [162] stocks, Standard of California, Union Oil, Texas Corporation.

They have liabilities here—I haven't reduced it

(Testimony of Adolf K. Eitner.)

per share. I will do it right now. They have liabilities of about close to \$150.00 a share. So if you offset your current liabilities against your liquid assets you have liquid assets there of about \$150.00 a share.

Now, if the prospective purchaser could reach in and benefit himself from those assets, that would be one thing. He has no assurance or indication he can. So far as the foreseeable future is concerned. Do I make myself clear?

Q. I think I understand what you mean, but I can't see how that justifies the value which you attempt to ascribe to the stock of this corporation.

Let me ask, did you make any effort to ascertain whether there were any corporations in and about Los Angeles who were engaged in the business of holding real estate and securities of this type?

A. Yes, I know of a number of corporations of that type.

Q. Did you examine their records or in any way ascertain what their income was?

A. They happen to be either personal holding companies or family holding companies of one sort or another without a market for their stock.

Q. You mean the information was not available?

A. The information was not available. [163]

Q. You think that a fair rate of capitalization of the earnings of this corporation would be 10 per cent? Was that your testimony?

A. That is the basis that I applied to the expected dividend income from it. I believe I also



(Testimony of Adolf K. Eitner.)

said that were it not for the speculative features that I believed the buyer might see in the stock that he would capitalize it probably at a higher rate or want to capitalize at a higher rate.

Q. How did you ascertain this 10 per cent would be a reasonable figure to use?

A. We have in the record on Hamburger Realty the going rates from general market representative stocks. Keeping those general rates that were available in the market in mind, along with the disadvantages which are represented to the stockholder by the different features, we have already enumerated in this stock, and considering what I thought were some speculative possibilities in it, I arrived at that rate.

Q. But none of those companies, as I recall, were in the business of holding miscellaneous parcels of real property.

A. That is correct. You have one example here in town that has been strictly a real property holding concern in this Los Angeles Investment Company. That stock up until comparatively recently had been selling in the market—I believe it is listed on the Exchange at prices ranging anywhere from a fifty to a seventy-five per cent discount from [164] what a reasonable liquidating expectation was. It was in the course of liquidation, however, and was not comparable to this because of that.

Q. You also found, did you, or you have also encountered instances where stocks are selling on the New York Exchange at prices which would

(Testimony of Adolf K. Eitner.)

yield as low as two and three per cent of their income?      A. On October 13, 1941?

Q. Yes.

A. There may have been one or two, but they certainly were the exception rather than the rule.

Q. Well, you know of cases, do you not, where the corporations haven't paid any dividends in as many as five years and they sell at substantial prices? Isn't that true?

A. I don't know what you mean by "substantial price," Mr. Tonjes.

Q. Say \$25.00 to \$50.00 a share.

A. It is all relative, in relation to assets.

Q. But you do find that condition?

A. You find stocks that do not pay dividends selling for any variety of price you might almost say.

Mr. Tonjes: That is all. [165]

#### Redirect Examination

By Mr. Blum:

Q. As a matter of fact, Mr. Eitner, it is true, is it not, that back in 1927 and 1928 some of our best stocks were selling for one per cent yield, prices that gave about one and one and a half per cent yield, weren't they?

A. I think so, yes. Almost a negative yield.

Mr. Blum: The Court could take notice of the Laird case where that was brought out quite forcibly.

(Testimony of Adolf K. Eitner.)

Q. (By Mr. Blum): With respect to the assets which Mr. Tonjes has been questioning you about and as to the speculative quality of the A. Hamburger & Sons Company, did you take into account, in arriving at that conclusion, the fact that of the fair market net worth of three million, four hundred seventy-five thousand odd dollars, that approximately half of that is represented by loans to stockholders? A. Yes, I did.

Q. And that leaving approximately a million and three-quarters to assign to the other assets, which have been mentioned, and deducting from the million and three-quarters the approximately seven or eight hundred thousand of liquid assets would leave nine hundred thousand or a million dollars of the real estate assets of the company with respect to which the testimony was that if one director [166] proposed the sale of it the other one opposed the sale of it? A. That was correct.

Q. Did that enter into your opinion as to the speculative aspect of this stock?

A. Yes, it did.

Q. Do you know, Mr. Eitner, what the market average was in August of 1937?

A. I would say—you are now talking about the Dow Jones Industrial Averages?

Q. Yes.

A. Around a hundred ninety, thereabouts.

Q. From that date to the basic date did the market ever hit that average again? A. No.

Q. Has it hit it up to date?



(Testimony of Adolf K. Eitner.)

A. No, although it is reaching it right now.

Q. It is on an upward trend right now?

A. It has been hanging around a hundred eighty-five.

Q. With respect, Mr. Eitner, to the statement which you made that the purchaser would look to the possibility of a speculative gain by reason of a change in management some time in the indeterminate future, which might either use his assets to produce more income or might liquidate the corporation and return that asset value to the stockholder, were you mindful of the testimony of Mr. Mitchell and Mr. Millken [167] to the effect that probably succeeding management and controllers of this corporation would be the children of David A. Hamburger whom had had no business experience or had not indulged in any business enterprises, save one who had lost heavily in a mining deal?

A. Yes, I was aware of that and took it into account.

Q. Did the fact that the A. Hamburger & Sons stock, in accordance with Mr. Milliken's testimony, was not looked upon favorably by banking circles as security for loans enter into the picture of whether this would be a speculative or investment security?

A. That factor would have a bearing on the value of any security, valuation.

Q. The fact it was not favorably accepted by banking circles, as a security for a loan, would tend to increase or decrease the value of that stock?

(Testimony of Adolf K. Eitner.)

A. It would tend to decrease the value.

Mr. Blum: That is all.

Recross-Examination

By Mr. Tonjes:

Q. Mr. Eitner, I notice in your direct examination you testified with regard to the loans made to the stockholders? A. Yes.

Q. Those loans were made on the basis of two per cent, [168] according to Exhibit 4?

A. That is correct.

Q. Do you know what the going rate of interest was on a well secured loan at or about October 13, 1941? A. Long term loan to an individual?

Q. Well secured, yes.

A. Well, I don't know where an individual would go to borrow money—let's see, that would be 27-year money. I don't know where an individual would borrow 27-year money. Prior to 1935 our insurance companies used to make some collateral loans to individuals which were secured. They came pretty much to grief on those. The 27-year loan is not a bank loan. It is not an insurance company loan. It is a mortgage on your house or some such thing.

Q. Would you say that the loan to the individual stockholders by this corporation, wherein they gave their stock as collateral, was a well secured loan?

A. I would have to see the figures on the collateral.

(Testimony of Adolf K. Eitner.)

Q. They gave the corporation stock, the stock of A. Hamburger & Sons, Inc. as collateral?

A. Each in the amount they had?

Q. Yes.

A. It was not a well secured loan in the sense you could liquidate the collateral and receive payment readily.

Q. Do you know whether or not this loan was secured [169] by that type of collateral?

A. I am told it was secured by the A. Hamburger & Sons Corporation stock, and have been so informed.

Q. Do you know whether the stockholders could have borrowed money from other sources at two per cent interest?

A. I am quite positive they could not have.

Q. They could not?           A. No.

Q. So that the stockholders themselves received an advantage over what might be termed an arm's length transaction in that connection?

Mr. Blum: I object to it as being incompetent, irrelevant and immaterial; assuming something not in evidence, in fact, directly contrary to the evidence. Mr. Mitchell testified these loans and the other matters were taken up in connection with the settlement of the will contest and the attorneys, each had their own attorneys.

The Court: I don't understand he is attempting to prove that as a fact. He is asking this more as a cross-examination of the witness. You are attempting to prove a fact by him?



(Testimony of Adolf K. Eitner.)

Mr. Tonjes: No, I am not. I am attempting to show these stockholders, by reason of the fact they were stockholders, had other advantages, such as the borrowing of money at a low rate of interest and sources from the [170] corporation where they could, not on the basis of the same collateral, borrow it from other sources.

Mr. Blum: We will stipulate to that, Mr. Tonjes; these particular stockholders didn't.

The Court: I don't know that there is a question pending. If there is we have probably forgotten. You might re-frame your question and see what the witness answers.

Q. (By Mr. Tonjes): I think your answer was yes; wasn't it?

A. No, I don't believe I answered it: I have lost the question en route.

Mr. Tonjes: Well, I think I stated what I was attempting to prove counsel said he would be willing to stipulate, so it suits my purpose.

The Court: As I understand it, counsel said he would stipulate as to the rate of interest, is that correct?

Mr. Blum: I said I would stipulate these particular stockholders, the Hamburger family, would enjoy a benefit which they could not receive elsewhere. So Mr. Tonjes won't be misled, I didn't say I would stipulate that the purchaser of that minority interest from one of the members of the family would.

Q. (By Mr. Tonjes): You recall what your

(Testimony of Adolf K. Eitner.)

testimony was, Mr. Eitner, regarding the possibility of liquidation of this corporation? [171]

A. I recall there was no imminent possibility of a liquidation, with circumstances as they existed on October 13, 1941. Any possibility of liquidation was purely speculative.

Q. Is there any doubt at all in your mind these assets could have been sold and the corporation liquidated for the total net worth, as shown on Exhibit 4?

A. No. As I understand it these are the agreed fair market values.

Q. Yes. A. I accepted them as such.

Q. So that in the event there was a liquidation there would have been——

A. There would have been this realization.

Q. This realization, yes.

A. That is correct.

Mr. Tonjes: I think that is all.

#### Redirect Examination

By Mr. Blum:

Q. Mr. Eitner, to carry on Mr. Tonjes' last question, if these assets had been sold by the corporation and then there had been a liquidation the stockholders, by reason of taxes, expenses and other items which enter into both sales and liquidations, would not have received the fair market value as stipulated here, is that correct, from your [172] experience? A. That is correct.

(Testimony of Adolf K. Eitner.)

Mr. Tonjes: At the same time you can see there could have been a liquidation in kind.

The Witness: In kind? What do you mean by "in kind," sir?

Mr. Tonjes: A distribution of the assets on a pro rata basis.

The Witness: I don't know what the legal involvements would be in that. Subject to that I would assume there could be such a liquidation.

Mr. Tonjes: I think the court will take judicial notice of that sort of a liquidation not being taxable.

Mr. Blum: You didn't ask the witness if that would be a taxable transaction; did you?

Mr. Tonjes: No, I didn't.

The Court: Is there anything further from this witness?

Mr. Tonjes: Nothing further.

Mr. Blum: That is all.

(Witness excused.)

Mr. Blum: Mr. Walker.

Whereupon,

### THERON W. WALKER

called as a witness for and on behalf of the Petitioner, [173] having been first duly sworn, was examined and testified as follows:

#### Direct Examination

The Clerk: What is your full name, please, sir?

The Witness: Theron W. Walker.



(Testimony of Theron W. Walker.)

Q. (By Mr. Blum): What is your business or occupation Mr. Walker?

A. I am manager of the adviser and research department of Bogardus, Frost & Banning, members of the New York Stock Exchange, New York Curb.

Q. How many offices do you have, Mr. Walker?

A. Three, two in California and one in New York; partners in the New York office.

Q. Where did you attend school, Mr. Walker?

A. The University of Iowa, from which I graduated in 1923 with a Bachelor of Arts degree, with a major in economics and related subjects.

Q. Where did you go into business after your graduation from college? After finishing Iowa where did you go?

A. I attended for two years and graduated from the Graduate School of Business at Harvard, Boston-Cambridge, in 1925.

Q. Following that did you go into business?

A. I went into the employ of a firm known as Lazard, Freres in New York City. [174]

Q. What was their type of business?

A. They were known as private international bankers, investing money for their own account largely, and also participating in underwriting, special investigations.

Q. What were your duties while so engaged?

A. For the 11 years I was with them I was almost exclusively in their statistical department, the last six of which I managed the statistical and research.

(Testimony of Theron W. Walker.)

Q. What is the function of the statistical department in such an investment house?

A. To appraise, analyze, cover, maintain the value of firms, investments, customers' investments, appraisal of individual holdings, both domestic and foreign.

Q. In connection with that are you called upon to look into various securities to arrive at a fair market value?

A. Constantly.

Q. Of those securities?

A. Constantly, both listed and unlisted, privately held and publicly held.

Q. Following your work with Lazard and Freres for 11 years, where did you next go?

A. I was employed by Schwabacher & Company and brought by them to Los Angeles.

Q. What type of business was Schwabacher & Company in? [175]

A. They are brokers, underwriters, investment dealers. I was employed by them to manage an advisory and research department in Los Angeles, and engage in the development of new deals, new underwritings.

Q. Did they have any stock exchange seats?

A. Yes, they were members of most of the exchanges in the country. I would like to add, at this point, I omitted to state the present firm I am an employee of is also a member of the Los Angeles Stock Exchange.

Q. How long were you with Schwabacher & Company?

A. Approximately a year.

(Testimony of Theron W. Walker.)

Q. After leaving Schwabacher's, where did you go?

A. I formed, in conjunction with another individual, an investment counsellor organization.

Q. How long were you engaged in that?

A. Three years.

Q. What were the functions of an investment counsellor?

A. To supervise the funds of individuals, to appraise their holdings by research field and otherwise.

Q. Were you counselling them as to the type of security to purchase and comparing securities into which they might put their money?

A. Constantly.

Q. Were you also, as an investment counsellor, [176] appraising various securities with the idea of determining which were the better securities to advise your clients to invest in? A. Yes, sir.

Q. Did that include both listed and unlisted securities? A. Yes, sir.

Q. Did that include closed corporations?

A. Yes.

Q. Did that include minority interests?

A. Yes, sir.

Q. Did that include any closed corporations which were contemplating placing their stock on the market, either over-the-counter sales——

A. A number of different times, yes.

Q. Upon the termination of that association, where did you next go?



(Testimony of Theron W. Walker.)

A. To the employ of the present firm, Bogardus, Frost & Banning. That was in 1940, if you would like the date, January, 1940.

Q. Just explain briefly what type of business your present firm is engaged in.

A. The present firm is a broker and investment adviser and occasionally a dealer in securities.

Q. Do they belong to any underwriting syndicates? [177]

A. On occasions.

Q. Do they participate in the underwriting of securities with respect to which it is necessary to appraise those securities?

A. More often the procedure has been what is known in the business as a finder of underwriting business, and the placing of that business with an underwriting organization, which involves the appraisal of the security.

Q. Do I understand by that you have or know of a security, block of securities, which it is desired to have marketed, that your firm finds an underwriter to market the security and underwrite it?

A. That, or it participates through some company which appears to be in need of financing in helping them determine the kind and type of security and the price at which it should be marketed.

Q. You have been shown, have you not, the stipulation of facts which has been entered into in this case, together with Exhibits 1 to 9, which I will show you, and ask you to look at and see if you have had copies of those instruments?

A. Yes, sir.

(Testimony of Theron W. Walker.)

Q. Then you were in the courtroom this morning when Mr. Mitchell, Mr. Sharp and Mr. Milliken testified? A. Yes, sir.

Q. You heard their testimony; did you? [178]

A. Yes.

Q. You had a copy of the hypothetical question which was asked Mr. Eitner with respect to the Hamburger Realty Company stock, did you not?

A. Yes, sir.

Q. And you heard the question which was read to Mr. Eitner in the courtroom today?

A. Yes, sir.

Q. And you have read the hypothetical question?

A. Yes, sir.

Mr. Blum: In order to save time, your Honor, I desire to offer the question we heretofore read to Mr. Eitner with respect to the Hamburger Realty Company stock and that it be deemed to have been read to Mr. Walker.

The Court: Is there any objection?

Mr. Tonjes: It will be so stipulated.

The Court: Very well. Do you understand the question, Mr. Walker?

The Witness: Yes.

The Court: You may answer the hypothetical question. Which company are you making special reference to?

Mr. Blum: The Hamburger Realty Company.

Q. (By Mr. Blum): First, assuming the facts which have just been read to you, do you have an opinion as to the fair market [179] value of the

(Testimony of Theron W. Walker.)

104.167 shares of the Hamburger Realty Company stock?      A. As to the basic date?

Q. As to the basic date.      A. I do.

Q. What is your opinion as to the fair market value of said stock on said date?

Mr. Tonjes: I object to the question, your Honor, on the ground this witness is not qualified. We have here a problem of evaluating the stock of a personal holding company engaged in the holding primarily of real estate. This witness has not been shown to be qualified or ever having valued any stocks of any corporations which are comparable to either of the corporations involved here, particularly the Hamburger Realty Company.

The Court: Well, we will permit him to answer the question. You may, of course, develop your theory upon cross-examination. I take it your objection goes more to the weight of the evidence than it does to the competency of the witness.

Mr. Tonjes: Very well.

The Court: I will overrule the objection.

Q. (By Mr. Blum): What is your opinion as to the fair market value?      A. \$1,750.00. [180]

Q. \$1,750.00 a share?      A. Yes.

The Court: That is the Hamburger Realty?

Mr. Blum: Hamburger Realty, yes, your Honor.

The Witness: Yes.

Q. (By Mr. Blum): Now, in arriving at that value, Mr. Walker, what factors did you take into account?



(Testimony of Theron W. Walker.)

A. I took into consideration the usual factors of analysis, the financial position of the company, including both its fixed and current assets, its earning power, its dividend power, its management, the factors that are—aside from the company's position, that is, what was the going rate for money at the time of October, 1941, which involves such factors as the state of the war, the probability of war increasing; factors that would govern an investor at that time.

Q. Did you take into account that this was a family, closed family corporation?

A. I also considered that factor, the character of the management as set forth in the stipulation and further set forth in testimony today.

Q. And the fact this was a minority interest in the corporation?      A. Yes, sir.

Q. Did you form an opinion as to whether the stock of [181] the Hamburger Realty Company would be more of an investment security or speculative security?      A. Yes, I did.

Q. Which do you think it would be more like?

A. I believe it would have the flavor of an investment company.

Q. What is your definition of an investment?

A. A commitment entered into for a substantial period of time, largely for the purpose of producing a secure income.

Q. Now, I believe you said you took into account the going rate of money on the basic date. Will you explain how you took that into account in arriving at your value of \$1,750.00?

(Testimony of Theron W. Walker.)

A. The sources for investment are competitive. A man with money, looking to put his funds at work at interest, determines and views the field to see what is the rate where he might best employ his funds, considering his disposition. That involves an appraisal of the bonds, preferred real estate mortgages, cash, any form of investment.

Q. Then, as I understand it, in arriving at the \$1750.00 share value you sought out securities and other forms of investments to determine what yield they give if invested in on the basic date?

A. I did, considering both the question of liquidity that might be offered in other fields and non-liquidity that [182] would be available in this type of investment.

Q. Would you explain to us what you found in that respect and how you applied it to the value of \$1750.00 arrived at for the Hamburger Realty Company, please?

A. I took, first of all, the Dow Jones Industrial Averages, which are generally assumed to represent a cross section of the industrial life of this country, and composed of companies whose existence and durability is not particularly questionable, any more than is the guarantee of the May Company on the lease involved.

I took the earnings on that Dow Jones average, the dividend that it was paying, the price at which it was selling, both on a five-year average basis and as of mid-October, 1941. I found during that five-

(Testimony of Theron W. Walker.)

year period the yield on that average ran as high as 6.8 per cent and ran as low as 3.5 per cent.

That in October of 1941 the yield was about 6.2 per cent on the then current price and that the stock was selling at 10.5 times earnings. That particular investment would be completely liquid, so that should the war at that time then proceed as it apparently was, with Germany very rapidly moving into Russia, the threat of the war in the Pacific rather imminent, the tax bill under discussion in this country for excess profits from war, the desire of an investor to be able to change his mind with some degree of [183] ease, should he so wish, if the circumstances developed rather adverse.

At that same date in October, as evidenced by testimony of Mr. Eitner, individual securities whose dividend record extends, in some cases, back to 1882, 1884, were selling to yield from six to ten per cent. So that a buyer would be influenced, a possible buyer of the Hamburger Realty Company stock would be influenced by attractions in other fields.

Q. That led you to apply a factor which you determined would be a fair factor to both the buyer and the seller?

A. It did. I considered the quality of the assets, the character of the earning power, its probable continuity and it appeared to me, in my best judgment, that the factor of ten times, both for earning and yield, would find a willing buyer, adequately in possession of the facts, and that the seller were simi-



(Testimony of Theron W. Walker.)

larly informed and willing to sell, could meet on that basis.

Q. You spoke a moment ago, Mr. Walker, about the possible desire of a purchaser wanting to get into a security where he could change his mind and perhaps get out, in other words, liquidity. You spoke of this security as being the probability of continuity of income by which, I assume, you meant rather fixed income? A. That is right. [184]

Q. Now, do you know what the history of a war with respect to inflation has been?

A. Every war that we have an economic record about, and following, has produced a very substantial price inflation. By which I mean the purchasing power of income has declined.

Q. Where you have a fixed income security do you have any heads, gains in inflation, or just how is a fixed income security affected by inflation?

A. A fixed income security is adversely affected by inflation.

Q. Would you consider that the Hamburger Realty Company stock had liquidity or did not have liquidity?

A. Definitely did not have liquidity.

Q. So that a person purchasing this stock as a fixed income security would not have been able to sell out and get into some security which might protect him against inflation; is that correct?

A. Not with ease that would be possible in a marketable security.

Q. Would that affect the price which the pur-

(Testimony of Theron W. Walker.)

chaser would want to pay for such a security as this Hamburger Realty Company stock?

A. Yes.

Q. With respect to the securities which you investigated [185] in determining a yield of a security in which a purchaser might have put his money on the basic date for purposes of determining the value of this security, did you find any securities the underlying assets of which were real estate, either bonds or stocks or otherwise?

A. Yes, there are a number of bonds that have as security a mortgage on property.

Q. Do you have any in mind particularly?

A. Well, there are two basic kinds, the operating companies, industrial, public utilities, rail and real estate holding company.

Q. Do you know of any local corporations which have real estate bonds outstanding, holding corporations or building corporations?

A. Yes, there have been several.

Q. Could you name any of them?

A. Foreman & Clark Building, the Fifth Street Store Building.

Q. Do you know at what yield they were selling on the basic date?

A. I do. The Foreman & Clark Building, which was a secured bond, six per cent due January 1, 1948, was on October 22nd, which was the closest price I could obtain, 1941, selling to yield at maturity 11.5 per cent.

(Testimony of Theron W. Walker.)

Q. Where is the Foreman & Clark Building located? [186]

A. The corner of Seventh and Hill, on the southwest corner.

Q. Do you know the general reputation, or do you know by general reputation whether the corporation at Seventh—what street did you say the Foreman & Clark Building was located at?

A. Seventh and Hill.

Q. The corner of Seventh and Hill is a more valuable piece of property or less valuable, from a business standpoint, than Eighth and Broadway or Eighth and Hill?

Mr. Tonjes: That is objected to, your Honor, as this witness is not qualified to state his opinion with respect to real property. He has not been qualified.

Mr. Blum: I am not asking him that. I am asking if he knows the general reputation. Anyone can testify to general reputation.

The Court: I don't know that it is very material, anyway; is it, gentlemen?

Q. (By Mr. Blum): Did you mention the Fifth Street Store? A. I did.

Q. Do you know what yield was being obtained at the price it was selling for on the basic date?

A. I do. Again, as of October 22nd, the yield to maturity of that obligation was 7.2 per cent. [187]

The Court: Is that all the direct examination of this witness?

Mr. Blum: Just a moment.



(Testimony of Theron W. Walker.)

Q. (By Mr. Blum): Did you investigate or do you know with relation to the sales of securities made with regard to the Subway Terminal Building?

A. No, I do not.

Q. With respect to the value found by you, did you take into account the ability of the purchaser or the owner of this minority interest of stock to have a voice in the management of the corporation?

A. Yes, I considered that factor.

Q. Would that affect the fact that a purchaser or the owner of this stock would have no voice in the management? Would that affect your value upwards or downwards?

A. Downwards.

Q. Did you take into account the fact that the stockholders of this corporation, individual stockholders, are elderly people and that the rather imminent possibility of their passing on might raise questions of additional borrowing for the paying of death taxes and expenses of administration?

A. Yes, I did.

Q. Did you take into account the fact that the owner [183] of the stock, one of the individual owners of the stock, in lieu of borrowing from the corporation, might place their stock on the market?

A. I did.

Q. If they had placed their stock on the market, would that have affected the value of this stock?

A. It would affect the value to the extent of which would be in part determined by the amount of additional stock offered.

Mr. Blum: That is all.

(Testimony of Theron W. Walker.)

The Court: We will suspend at this time for a brief recess.

(A short recess was taken.)

Cross-Examination

By Mr. Tonjes:

Q. Mr. Walker, you spoke of the Fifth Street Store.      A. Fifth Street Store Building.

Q. There was a mortgage on that property; was there?

A. Collateral trust and refunding was the name of the obligation.

Q. It was the obligation that you were considering as having a certain return; is that right?

A. That is right.

Q. And you used that as a basis for determining what might be a rate of return which a buyer of this stock would expect. [189]

A. Only in the most general fashion, because it was not as—well, let me put it this way: in a very general fashion because it lacks a good many points of comparability.

Q. In the first place, they had no interest in the fee; did they?      A. No.

Q. And any raise in value, of course, wouldn't reflect to the benefit of the security holder.

A. That is right. And also the fact that the certainty of the income was in much less doubt in the case of the Hamburger Realty Company.

Q. Do you know at what rate those securities sold?      A. Which securities?

(Testimony of Theron W. Walker.)

Q. The securities which you spoke of, the Fifth Street Store obligation.

A. The price was ninety bid on that October 22nd, which I mentioned.

Q. What was the rate of interest in that obligation?

A. The basic rate was three per cent. The total rate was six per cent.

Q. What do you mean by the basic and total?

A. They were to be paid three per cent whether earned or not. Six per cent subject to the total earnings.

Q. I see. Now, do you know whether or not that obligation was secured by a mortgage on both the building and the [190] land on which the building was located?

A. No, I do not.

Q. You do not? A. No.

Q. It might well be that the security related to the building alone?

A. I have no knowledge.

Q. Could you tell me at what price the obligations of the Foreman and Clark Building were?

A. Seventy-five bid.

Q. Do you know at what rate of interest?

A. Six per cent.

Q. Six per cent? A. Yes.

Q. Do you know whether or not the security there covered both the land and the building?

A. I would rather not rely on my memory to state.

Q. Now, in the course of your experience in fixing the values of securities, has the greater part of



(Testimony of Theron W. Walker.)

your time been devoted to analyzing listed or unlisted securities?      A. Listed.

Q. Listed?      A. Yes.

Q. Have you ever made any analysis of corporations which were engaged primarily in holding real property? [191]      A. Yes.

Q. Were any of them located, or rather was the property which those corporations held located in and about Los Angeles?      A. Yes, sir.

Q. Could you give me the name of one or two of those?      A. East Highland Orange Company.

Q. What sort of properties do they own?

A. Ranch and citrus property, probably the largest citrus ranch in California.

Q. Was it a corporate stock?

A. It was a corporate stock.

Q. Was it a common stock?

A. Common stock.

Q. Do you know what rate of return it yielded?

A. At the time it was paying no dividends.

Q. Paying none at all?      A. No.

Q. What did it sell for?

A. It had no market. It was a private personal holding company.

Q. It had no market?      A. No market.

Q. Did you investigate any others?

A. Of a similar nature?

Q. Yes. I mean corporations engaged in holding real [192] property, such as the Hamburger Realty Company.      A. No, sir.

Q. You have not?

(Testimony of Theron W. Walker.)

A. No, sir, aside from such obligations as I mentioned before, the securities which are unlisted such as these bonds, Ambassador Hotel, similar obligations that one is confronted with.

Q. Yes. But they are not stock interests, they were obligations to pay?

A. There have also been certain stock interests, the Central Investment Company, the L. A. Investment Company.

Q. Well, did you investigate and analyze any of the common stock values? A. Yes.

Q. Of corporations engaged in the holding of real estate in and about Los Angeles?

A. Yes, sir.

Q. Which ones were they?

A. Central Investment Company, for one.

Q. Did it own property in and about Los Angeles? A. It owns the Biltmore.

Q. The Biltmore Hotel? A. Yes, sir.

Q. Do you know what the total value of the assets of that corporation were at the date you made the investigation? [193]

A. I don't know exactly, but I would say they were substantially, exceeded those of the Hamburger Realty.

Q. Do you know what the yield was based on a fair market value of those properties at that time?

A. Common stock was paying no dividends at that time.

Q. Paying no dividends? A. No.

(Testimony of Theron W. Walker.)

Q. Do you know what the stock was selling for at or about that time?

A. In the range of eight to ten.

Q. Eight to ten dollars a share?

A. Somewhere around there. I haven't refreshed my mind recently. It is a matter of some conjecture. It was rather depressed.

Q. Do you know what the par value would be?

A. \$100.00, I believe.

Q. \$100.00?           A. Yes.

Q. In arriving at your value, you determined at what price you would recommend a purchase, the degree of security of investment?

A. I don't understand your question.

Q. When you recommend a certain price, as the purchase price of a common stock, do you consider the security of the investment? [194]

A. Do you mean the underlying assets or the security of the price?

Q. The underlying assets.           A. Certainly.

Q. And whether or not those assets would be likely to decline a great deal in value?

A. I do.

Q. You do that?           A. Yes, sir.

Q. Did you make such a comparison in the case of Hamburger Realty Company?

A. I did.

Q. What conclusion did you reach with respect to whether it was a good security investment or not?

A. I believe the assets and their value have been stipulated to, so I didn't concern myself as to



(Testimony of Theron W. Walker.)

whether they were of one sort or another, in terms of their value.

Q. Did you consider those assets good substantial assets?

A. Definitely. The May lease is a very substantial asset.

Q. What would the rate of return ordinarily be on a well secured investment?

A. What kind of an investment, a common stock or——

Q. No, an investment in a real estate holding corporation. [195]

A. It would be less desirable than many others.

Q. I am asking you what the rate of return would be, if you know?

Mr. Blum: I object to that as being ambiguous. You said you didn't mean in the common stock, you meant in a real estate holding corporation. Do you mean in the assets of the corporation or the common stock of a——

Q. (By Mr. Tonjes): You have stated that an investment in the Hamburger Realty Company would be a reasonably secure investment; is that correct?

A. That is right. I didn't say it that way, but that is the effect of my statement.

Q. Now, assuming that state of facts, what rate of return would an investor expect on his investment in buying the capital stock of the Hamburger Realty?      A. Ten per cent.

(Testimony of Theron W. Walker.)

Q. Ten per cent, you say?

A. Yes, sir, as of the base date.

Q. As of the basic date? A. Yes.

Q. Would you say that ten per cent is a high or a low rate of return, considering investments generally?

A. As of that time I would say it was a very fair rate, risk considered. [196]

Q. I am speaking of investments generally as of 1941. A. So am I.

Q. You say ten per cent would be just a fair rate of return?

A. For a similar type of obligation, yes, sir.

Q. Could you tell me what corporations were paying dividends at a rate in excess of ten per cent at that time, which would have a comparable degree of security?

A. Consolidated Edison Company of New York began their dividends in 1885 and paid them consecutively to date with no interruption.

Q. At what rate?

A. The rate at the basic date was \$1.60, which at the then market price mid-October was ten per cent yield.

The Pennsylvania Railroad, having paid dividends without interruption from 1884 to date, was selling to yield 9.2 per cent.

General Motors, having paid dividends without interruption from 1915, was selling to yield 9.38 per cent.

American Telephone & Telegraph, with no varia-

(Testimony of Theron W. Walker.)

tion in its rate for many, many years, and having paid since 1881 without interruption, was selling to yield practically six per cent.

Q. Now, those are either rails or industrial companies or public utilities; is that correct? [197]

A. That is right.

Q. Do you know any real estate holding corporation, the stock of which was selling to yield six or ten per cent?

A. I gave you the bonds of a real estate company, the——

Q. I am not asking about the bonds. I am asking now for common capital stock of a real estate holding company.

A. Stocks of real estate holding companies are very few in number. In fact, I know of no company where they were publicly owned and publicly listed whereby one could make a reasonable check.

Q. You know of none that were yielding from six to ten per cent at or about that time?

A. No, sir.

Q. You also spoke, I believe, about the possibility of the United States being involved in the war and possible inflation.

A. Yes, sir.

Q. And that the yield based on the inflated value would, therefore, be less; is that correct?

A. If inflation takes place.

Q. If it came.

A. I didn't say the yield would be less. I said the purchasing power of your fixed income would decline.



(Testimony of Theron W. Walker.)

Q. Yes. Now, are you familiar with the trend of real estate values during periods of inflation, such as might be [198] expected in the event of war?

A. Yes, sir.

Q. Do you know what they do?

A. Yes, sir.

Q. What do they do?

A. It depends on the character of the real estate.

Q. What would you say about the price of a building, such as the May Company now occupies, with a fixed income on that property for a very substantial period of years ahead?

A. It would have less opportunity to advance in price than one where the obligation on a fixed income basis did not run more than a year or two.

Q. What would you say as to other properties generally located around town, such as on the balance sheet, Exhibit 1 of the stipulation?

A. On page 1 of Exhibit 1?

Q. Yes. Exhibit 1 consists of one page.

A. Well, in the first World War the rental prices were generally fixed by some governmental agency which restricted the rise in any real estate value, and one could reasonably expect with a similar war, and the Government already producing certain controls, that a similar occurrence would happen.

Q. These are to a large extent commercial properties used for business purposes?

A. I don't know. [199]

Q. Judging from the location of them they

(Testimony of Theron W. Walker.)

wouldn't seem to be residential properties; would they?

A. As I recall previous testimony,—

Q. I am asking you of your own knowledge.

A. —early this morning—

Q. I am asking you of your own knowledge, Mr. Walker.

A. —the remarks were made to the effect there were apartments and hotels. Certain of these, of course, are business properties. But based upon the testimony early this morning I would gather the more substantial properties were hotels and residences, apartments.

Q. You know nothing of these properties personally?

A. I didn't inspect them, no, sir.

Q. You base your conclusion then of the fair market value almost entirely on the earning capacity as it has been established by the record?

A. The earning capacity largely comes from the May lease, as I understand it.

Q. Do you know what that earning capacity would be for the entire term of the lease?

A. I didn't compute it, no.

Q. You don't know?           A. No.

Q. \$300,000.00 a year for 30 years would be approximately \$9,000,000.00; is that correct? [200]

A. Yes.

Q. You, I suppose, in connection with your activities as an adviser have become in a general way familiar with the May Company?

A. Yes, sir.

(Testimony of Theron W. Walker.)

Q. They are a good substantial organization?

Mr. Blum: Objected to as being incompetent, irrelevant and immaterial. There is already an exhibit in evidence with respect to the May Company being in the Moody Manual, as to what type of store it is.

Mr. Tonjes: We introduced in evidence a copy of Moody's report. Here is a man who states he is familiar with various stock values and commercial organizations, and I think he can state what his opinion is with regard to its stability.

The Court: The objection is overruled.

The Witness: I think the May Company is generally known, in our business, as being a sound investment, evidenced by the fact it has paid consecutive dividends since 1911, despite which fact it was selling on the basic date to yield 5.6 per cent.

Q. (By Mr. Tonjes): The buyer of the stock of Hamburger Realty Company might reasonably anticipate the entire lease contract would be carried out? A. I would assume so. [201]

Q. I believe you also spoke about the management of the Hamburger Realty Company. Tell me briefly what your understanding is of the management.

A. The management is composed of the owners of the business through the stock. They are a family that are definitely at odds with other parts of the family. They are unable apparently to agree upon any particular policy.



(Testimony of Theron W. Walker.)

Q. Do you know exactly what management is necessary for the continuation of the corporation's activities, considering, of course, the nature of the way the property is tied up by leases and so forth?

A. It would presumably require less management than that of an active operating company, yes, because of the nature of the May lease and the source of the income.

Q. Can you think of anything they have to do?

A. Yes, I think it requires knowledge of the lease, ability to see their hazards and risks under that lease and the insurance pictures given us this morning.

Q. That lease was in effect at this particular date. There wasn't much they could do about that; was there?

A. No, but they should have protected themselves under the terms of that lease.

Q. What do you mean by "protect themselves"?

A. As to the fire insurance and other hazards.

Mr. Tonjes: I think that is all. [202]

#### Redirect Examination

By Mr. Blum:

Q. Mr. Walker, it has been intimated to you that the real estate shown on Exhibit 1, other than Item 1, being the May Company Building, was business property. If that intimation is true and if that was business property, would there be any management, managerial duties with respect to those properties?

(Testimony of Theron W. Walker.)

A. Certainly. If the full value of the assets is to be realized upon.

Q. Is the ownership of 275 shares of Farmers and Merchants National Bank a rather substantial block; do you know?

A. Yes, it would be considered substantial.

Q. Owning that stock, would that require certain managerial duties with respect to voting of it and electing members of the board of directors of the Farmers and Merchants National Bank?

A. Yes, sir.

Q. In other words, without posing as an expert on management, there would be certain foreseeable, from Exhibit 1 there would be certain managerial duties the manager of the Hamburger Realty Company would have to do?

A. That is correct. I think any buyer, other than the family, would certainly want some managerial talent.

Q. Would the fact that the total liabilities are [203] approximately, I should say, four to five times the current assets indicate any particular problems with respect to management?

A. It would indicate to me that the management had not chosen to create what I would consider a safe working capital to properly develop its other assets than the May lease.

Q. You were asked whether you knew any real estate common stocks yielding from six to ten per cent on dividends. Do you know of any real estate,

(Testimony of Theron W. Walker.)

common stock, yielding any other percentage of dividends?

A. Only the ones I mentioned, which were yielding——

Q. I mean other than those bonds you mentioned or the Central Investment or the East Highland?

A. No, the history of real estate holdings properties have been a rather poor one for the holders of the stock or the bonds.

Q. And they consequently sell at a very reduced rate on the asset value?

A. They sell at a discount from the asset value larger than would be true of other properties, such as United States Steel, which also sells considerably under its asset value.

Q. Do you know the number of shares outstanding of the Central Investment Company?

A. No, I do not.

Q. Did you take into account, Mr. Walker, the fact that [204] although the money is coming into the Hamburger Realty Company from the May Company and are, as you stated, I believe, very safe and very reasonable probability of receipt of it by the company, but did you take into account the fact that once it gets into the company the Hamburger family would be in control of whether they desired to pay out dividends or accumulate it and make investments?      A. I did.

Q. Did you take into account with respect to their accumulating and making investments the



(Testimony of Theron W. Walker.)

type of management that would be making those investments?

A. I did. I think a buyer would much prefer a responsible board of directors.

Q. Would such a situation as would exist in that event affect the value of the stock?

A. It would affect it adversely as it now exists.

Q. As investment counsellor, would you have advised a client to purchase the Consolidated Edison stock at a ten per cent yield or the Hamburger Realty stock at a ten per cent yield?

A. That would depend upon the position and preference of the client and his investment requirements. A certain type of buyer would prefer one and a certain type of buyer would prefer the other.

Q. In your opinion, both having the same yield in that [205] respect, they would be comparable for the investment?

A. If the buyer were looking for ten per cent, he perhaps would choose between the two, based on the merit of the company.

Q. Let's put it this way: assuming a buyer, without any portfolio at all, just with a lot of cash money coming in to start a portfolio, would you have thought it a better risk for him to buy in the Consolidated Edison at ten per cent or to buy in the Hamburger Realty at ten per cent?

A. If he was looking for a certain fixed income over a certain period of years, I believe the Hamburger Realty would have been his choice, on my recommendation.

(Testimony of Theron W. Walker.)

Q. What would be the result with respect to the liquidity desires of the purchaser?

A. If he wished to remain liquid, he would purchase Consolidated Edison.

Q. And in your experience in the investment field do you find the majority of purchasers of securities want liquidity or not?

A. The majority of purchasers prefer liquidity, especially in a period such as was then existent.

Mr. Blum: That is all.

#### Recross-Examination

By Mr. Tonjes:

Q. Just one question, Mr. Walker. I believe you stated [206] from your examination of Exhibit 1 that the current assets of the corporation were more than should be carried. Is that correct? Or something to that effect.

A. I made some such observation.

Q. Yes. I think it was for the purpose of showing that in the event they wanted to make any additions or improvements or repairs to their properties they would not be in a position to do so. Do you recall that?

A. I didn't put it quite that broad, but that was the general feeling, that the net quick assets, as we call it in our business, were less substantial for a company of this size than one would generally expect, yes.

Q. Now, do you know of any properties which the company had at that time that required any expenditures?

(Testimony of Theron W. Walker.)

A. I am not familiar with the properties, sir. The values to them were stipulated to. I didn't see fit to go back of it.

Q. If that was the situation, it probably would be advantageous to the corporation not to carry any large cash balance, but rather to keep the money in forms of investment, which are producing income, assuming that to be true?

A. Not being part of the company's management, I don't believe I am qualified to answer that.

Mr. Tonjes: Those are all the questions I have.

The Court: It occurs to me—maybe you gentlemen [207] have it straighter in your minds than I have—but in connection with this May property, which seems to have a book value of less than \$2,000,000.00 but a fair market value, or stated to be a fair market value of \$4,000,000.00, to what extent, if at all, does the so-called good or advantageous lease, if any, enter into the fixing of that fee or \$4,000,000.00?

Mr. Blum: I can answer that, your Honor, by stating just how we arrived at the \$4,000,000.00 for purposes of this value.

The Court: You see what is running through my mind—I think you probably do—from the nature of my inquiry. If you wish to explain it, it is all right. I don't want to try to tell you how to try your case.

Mr. Tonjes: If Mr. Blum's explanation is inconsistent with my thoughts, I will express mine.



(Testimony of Theron W. Walker.)

Mr. Blum: We took the rentals to be collected and used the seven per cent discount basis,——

The Court: That is looking forward over the 30-year period when you were to collect the \$9,000,000.00?

Mr. Blum: That is correct, your Honor. And we discounted that down to a seven per cent basis, and that came out—my figures may be a little bit off—to something like three and three-quarters million.

We added back approximately a quarter of a million for residual value of the fee, which the Hamburger Realty [208] Company would own, but which it wouldn't get for 30 years. In other words, we took a present day value of the building and assumed that would be its value without the lease in 1972, and discounted that back.

The Court: That was the point I was making. What you have stipulated here as fair market value does give effect to the May Company lease; is that correct?

Mr. Tonjes: Oh, yes, your Honor.

The Court: I see.

Mr. Blum: That is a fairly accurate statement of the way we arrived at it.

Mr. Tonjes: Yes.

The Court: I don't care so much about how you arrived at it, I was wondering about whether you had given effect to the lease itself in determining that figure. Do you wish to proceed on the other phase of the other valuation?

Mr. Blum: May it be stipulated that the ques-

(Testimony of Theron W. Walker.)

tion asked Mr. Eitner, with respect to the stock of A. Hamburger & Sons, Inc. may be deemed to have been read to Mr. Walker?

Mr. Tonjes: Yes, that is stipulated.

The Court: You recollect, do you Mr. Walker, the hypothetical question asked with reference to the A. Hamburger & Sons stock?

The Witness: Yes, I heard it read, and I read it.

The Court: You may take the short cut. Proceed. [209]

Redirect Examination

By Mr. Blum:

Q. Assuming those facts, Mr. Walker, do you have an opinion as to the fair market value of the 425.817 shares of the capital stock of A. Hamburger & Sons, Inc. on the basic date?

A. I do. I arrived at a figure of \$297.66.

The Court: Per share?

The Witness: Per share.

Mr. Tonjes: What is that figure, Mr. Walker?

The Witness: \$297.66.

Q. (By Mr. Blum): Will you tell us how you arrived at that figure, Mr. Walker?

A. The position of A. Hamburger & Sons being substantially different from that of the Hamburger Realty Company, for the reasons many times set forth here, hinging upon its loss of what is known as the May lease, the reliance upon earnings and dividends, changes considerably in this picture as against the Hamburger Realty.

(Testimony of Theron W. Walker.)

Without that type of security, one must look to the other assets of A. Hamburger & Sons for the revenue. And looking at 1943, which was the first full year of results, ex the May lease, one calculates earnings at \$20.10 per share. The 1943 earnings showed a drop in receipts from 1942 from [210] \$417,000.00 down to \$154,000.00, in round figures.

Expenses, however, declined from \$61,000.00 down to only about \$54,000.00. So that with reference to the management of this company and the comments made thereon, looking into the future and the appraising of that potential earning power, one has to consider how active the management will be in bringing its expenses into line with its reduced growth and such other factors as the incidents of war time taxation, the financial position of the company, the fact it is a family holding company, as set forth here in general—not as a tax matter—one cannot be sure of what the management will do, and that leads me to take that \$20.00 earnings as a base and add to it the probable income from the \$50,000.00 which was heretofore set forth as being further earnings; allowing taxes on a 50 per cent basis—actually the tax rate would be higher for the duration of the war, including excess profit taxes, and sometimes perhaps after that—I arrived at an estimated projection of \$25.00 a share.

Relying, I believe, in a generous manner on the past history of the company to pay out all of its dividends, I assumed the dividends would also be \$25.00 a share. The character of the assets being



(Testimony of Theron W. Walker.)

different, I assumed that the valuation of those assets in the market would also be different and would have to be discounted from that set for the Hamburger Realty Company. I arrived at a figure of seven times earnings as being, [211] in my judgment, a fair appraisal of the earnings, and at that price earnings ratio, a yield of 14.3 per cent would be from the \$25.00 dividends on the basis of \$175.00 price, as set forth by Mr. Eitner, the carry over of earnings would produce a larger dividend; and discounting it as he did by six and eight per cent factors, I arrived at the same figure he had of \$122.66 as a dividend discount figure, to which I added the one hundred seventy-five base stock figure and obtained the value of the total of \$297.66.

Q. I understand you used the same method Mr. Eitner did, except you used a seven times earning instead of a ten times earning for the income to be expected after January 1, 1943.

A. That is right. I chose to evaluate the business at a lower ratio.

Q. In your opinion, would the stock of the A. Hamburger & Sons, Inc. be classified as a speculative security or an investment security?

A. I think it would take on the character of a speculation?

Q. In arriving at the value which you have, of \$297.66, and in arriving at your yield factor, did you take into account the fact that A. Hamburger & Sons, Inc. was a closed family corporation.

A. Yes.

(Testimony of Theron W. Walker.)

Q. That this was a minority interest? [212]

A. Definitely.

Q. And the management, type of management, both present and expected future?

A. Type of management.

Q. The fact we were on a down trend of the market? A. Yes.

Q. The asset value?

A. Yes, sir. I also considered the fact that apparently up to some given date it had been the practice of the management to borrow from the company, which privilege might or might not run to the minority interest, being an outsider who would take on this additional stock.

Q. With respect to the general factors that you mentioned in regard to Hamburger Realty Company valuation, economic and European war, and so forth, you took those factors into account in evaluating the A. Hamburger & Sons, Inc., also?

A. I did, plus the fact that one was not as sure of the income in this situation as one would be with the May guarantee on the income of the other company.

Q. In arriving at the yield factor, you took into account the same yields of other securities which you mentioned with regard to Hamburger Realty Company stock? A. I did.

Q. Did you take into account any additional securities which you didn't mention, or any additional factors which [213] haven't been mentioned?

A. As concerns the difference in yield between

(Testimony of Theron W. Walker.)

the securities previously mentioned and well known by all of us and the yield assumed for this common stock of A. Hamburger & Sons, a competent analyst must look to the character of the assets. The certainty of those assets being properly managed and producing an income commensurate with their value, that is a factor that led me to place a higher yield on the stock of the A. Hamburger & Sons.

Mr. Blum: That is all.

#### Recross-Examination

By Mr. Tonjes:

Q. Mr. Walker, what did you say you considered to be the yield that an investor would expect on the A. Hamburger & Sons stock?

A. On the base price or upon the price that I set as \$297.66, the total appraisal?

Q. Well, you stated that the stock, in your opinion, was worth \$297.66. Did you determine that figure by applying a percentage to that and determining what the yield would be on that figure?

A. I did. The yield on that figure, on \$25.00 assumed dividends would be 8.4 per cent.

Q. 8.4? A. 8.4. [214]

Q. You consider that to be in harmony with the risks involved?

A. No. I perhaps did not make my explanation plain initially. The base price for that stock I computed to be at \$175.00, to which we added the expectancy of these two years of heavy dividends, discounted by the two factors, one of six and one of eight, for the longer run.



(Testimony of Theron W. Walker.)

Therefore, I would look—since you are going to get that dividend we presume and we have discounted it, therefore, your base price is \$175.00, which the buyer, in effect, is paying, because he is getting this other money back, plus the return on it between now and then, using the discount factor. On that price the \$25.00 dividend would yield 14.3 per cent in my calculations.

Q. Well, I am a little bit confused with all these figures. I wonder if you could tell me, taking all of those things into consideration, what percentage of yield a buyer would expect to receive on October 13, 1941?

A. 14.3 per cent.

Q. 14.3 per cent?

A. For this type of risk.

Q. Now, Mr. Walker, did you examine the balance sheet there, which is Exhibit 4?

A. I did.

Q. Would it be accurate to state that it shows that the [215] corporation owned approximately \$750,000.00 in Government Bonds?

A. I believe so.

Q. And that is, would you say, a high type of investment with respect to security?

A. Are you speaking of Government Bonds as an investment, ex —

Q. Which the corporation owned.

A. Of course, Government Bonds are a high type of investment, but bought through a company such

(Testimony of Theron W. Walker.)

as this, one looks at other things than just one type of its assets.

Q. Oh, unquestionably. But for an individual who wanted security, would or would he not take into consideration the fact that A. Hamburger & Sons owned approximately \$750,000.00 in Government Bonds?

A. He would take it into consideration, but not as offering him a great deal of security.

Q. Would you say that that would offer no inducement to him to accept a lower yield for his investment?

A. I would say it would be a very minor factor in this situation at that time in October of 1941 with companies whose business it is to invest in marketable securities and whose equity is listed on the stock exchange and are selling at substantial discounts, despite the fact their assets were selling at 20 per cent of Government Bonds and other bonds.

Q. Did you also take into consideration that the remaining [216] assets were assets in the form, to a large degree, of diversified real estate holdings?

A. I did.

Q. Considering the investment field generally, would you say the investment in real estate, assuming them to be reasonably diversified, is a reasonably secure investment?

A. If properly managed. But it requires a high degree of management.

Q. And is it your opinion that an investor in

(Testimony of Theron W. Walker.)

diversified real estate could reasonably expect a 14 per cent return on his investment?

A. Under this kind of condition, yes, because at that time——

Q. I mean generally. I mean with respect to real estate.

A. You can't be general and be specific.

Q. Would you say that a man investing in the real estate set forth on Exhibit 4 would expect a yield of 14 per cent on his investment?

A. In this company, as it was managed, yes, sir.

Q. I mean with respect to the real estate itself.

A. I still would answer it the same way.

Q. You say that a man investing a sum of money equal to the total of the real estate set forth on Exhibit 4 would expect a yield of 14 per cent on his investment?

A. I think that was quite common at that time, yes. [217]

Q. You also spoke of a possibility, I believe, or the necessity of the reduction of expenses. Do you recall how you used that phrase?

A. Yes. On Exhibit 5 I observed that in 1943 the receipts had fallen to \$155,000.00 from \$417,000.00 in the preceding year.

Q. What year was that, Mr. Walker?

A. '43, as against '42.

Q. You didn't use 1943 in your considerations; did you. Your consideration of the estimate of the earnings?

A. I used '43 as a base starting point, because



(Testimony of Theron W. Walker.)

that is the first year in which the company's earnings would give effect to the loss of the May lease. I then added back to it the anticipated 50, or whatever the gross amount of dollars was, and allowed for a 50 per cent tax to obtain a figure of \$25.00 of earnings.

Q. I see. Well, do you know what the nature of their expenses were that you thought they might curtail or reduce?

A. I would assume it would be largely salary. I have not seen a breakdown of their expenses. A business that has a gross of \$150,000.00, cannot support the same expense level that a business of \$400,000.00 can support.

Q. In the use of the income for the year——

A. May I interrupt you just a minute?

Q. Pardon me? [218]

A. I brought up that to say that I had assumed in my calculation of continued earning power, on the basis that the company would be operating following December 31, 1942, and would through the management effect some reduction its outgo in order to conserve its income at the reduced level, and thus make possible some increase in earnings over the '42 level, despite a probability of higher taxes. In other words, I was assuming on what I chose to believe a favorable point of view.

Q. You used the earnings for the years both 1942 and 1943 in projecting the future prospects?

A. I used as a base the earnings of 1943 with the adjustment I spoke of.

(Testimony of Theron W. Walker.)

Q. Yes. Now, 1942 and 1943 were war years; were they not? A. Yes.

Q. And the rates of income taxes were considerably over what they had been for the past decade, we would say? A. That is right.

Q. Did you make any adjustment for the possibility that the war might ultimately terminate and income taxes be reduced?

A. I did. That is why I credited them with that additional income that comes in in '43, as far as the partial offset to the other loss, with a rate of only 50 per cent tax total. Whereas, the projected rate as of October '41, with the excess profit tax under consideration, would be substantially in [219] excess of the 50 per cent rate.

I also assumed that the war in its magnitude would be quite expensive and would require a considerably increased governmental income, in order to carry the debt, and that such income requirements would require a considerably higher level of both corporate and income tax levels for a good many years than we have had in the past decade.

Q. You assumed, even though the book value of the net worth of the corporation was in excess of \$4,000,000.00, that an income of approximately \$400,000.00, why, they would be subject to a quite high excess profits tax?

A. It seemed like it.

Q. You also considered the fact, did you, Mr. Walker, that the corporation owned a warehouse which was under a long term lease?

(Testimony of Theron W. Walker.)

A. I think that is a part of the stipulation, as to the value of the assets and the income derived therefrom; is it not?

Q. Yes. But did you consider the fact the corporation might reasonably look forward to the receipt of that income, regardless of business conditions?

A. Since the income gross was not broken down in any of the statements made available, as stipulated hereto, I could not determine the percentage of income derived from any one property.

Mr. Tonjes: I think that is all. [220]

#### Redirect Examination

By Mr. Blum:

Q. Speaking of using the year 1943, Mr. Walker, do you mean that for the purposes of applying the 14.3 yield rate, which you spoke of, to the dividends, that you took what would be the expected earnings, beginning with that year, predicated upon the past earnings of the company, less the income which would be lost to the company by reason of the termination of the May Company lease?

A. That is right. I assumed 1943 earnings were the residue of the earnings of the business, ex the May lease. And added to that residue this other figure that has been mentioned, which would help increase those residual earnings somewhat.

Q. You computed that figure yourself; did you not?      A. That is right.

Q. You didn't take the actual earnings as shown



(Testimony of Theron W. Walker.)

on the stipulation of \$74,000.00 as the figure; did you? That isn't what you meant when you said you were taking 1943?

A. Yes. I took that \$74,600.00 deducted therefrom. I do not have it here in front of me, the actual amount, but it is the equivalent on a per share basis of about \$46.50.

Q. In other words, you took as the difference between a prior 5-year level and the loss of the May Company lease to be the earnings shown at '43, and assumed those would be the earnings to project into the future? [221]

A. The 1941 earnings were equal to \$66.60 a share. The 1943 earnings were equal to \$20.10 a share, to which I added that, plus residual factor we have spoken about, which increased those '43 earnings by 25 per cent.

Q. Now, in increasing the 1943 earnings, which you say work out to \$25.00 a share, which you used as the projected expected earnings; is that correct?

A. Yes.

Q. You assumed that that additional approximately \$5.00 would be made up from a reduction of taxes and reduction of expenses of operation; is that correct?

A. In part, yes.

The Court: Is that all from this witness?

Q. (By Mr. Blum): Would your opinion be changed as to the fair market value of the A. Hamburger & Sons stock if you were advised that the warehouse which Mr. Tonjes referred to had a

(Testimony of Theron W. Walker.)

lease on it to the May Company Department Stores for \$24,000.00 a year?

A. It would change my estimate somewhat, but only fractionally in terms of the total picture that would aggregate, as using '43 again, about a third of their gross income.

Q. Yes. It would be about a third of their gross income.

A. Which, in turn, was half of the expenses, that is, the \$25,000.00 or \$24,000.00 from that warehouse and was not quite half of 1943's expenses before taxes. [222]

Q. That would, you say, increase or change your estimate, your opinion, as to the value of the stock slightly?

A. About one or two per cent. I have here some statistics on a company named Murray Ohio Manufacturing Company. It is, I believe, about 40 per cent owned by Sears Roebuck, and Sears Roebuck buys a great deal of its output.

This company has paid dividends for a good many years, has had earnings in a year such as 1938, when many industrials were having a considerable decline in earnings to sometimes a deficit, indicating that the ownership of Sears Roebuck saw to it they got enough business or more.

The yield on that stock, taking the average of the high and low for October, was 12.6 per cent.

The Court: October of 1941?

The Witness: 1941. From a dividend that was covered in that year very nearly two for one. The

(Testimony of Theron W. Walker.)

company had net quick assets that accounted for about seven-ninths of its then market value. It had no long term or preferred stock. It was purely an equity proposition. This was also a listed issue.

Q. (By Mr. Blum): With the effect of the \$24,000.00 a year from May Company you would say one or two per cent, which would be approximately \$300.00 a share, instead of \$297.00 or \$302.00 a share? A. That is right. [223]

Mr. Blum: That is all.

Mr. Tonjes: No further questions, Mr. Walker.

The Court: I think, in spite of what you gentlemen said about preferring to continue this case this evening, I am going to suspend.

Mr. Tonjes: I think that would be advisable.

The Court: I think I will be on the record in stating just one or two little things. I am not necessarily trying to tell you gentlemen how to try your law suit, but I am interested a little in this group of items in the balance sheet, Exhibit No. 4, obviously representing loans from the corporation to stockholders. I see some of them are carried at a fair market value of only 75 per cent of the book value. I would like to have that explained to me sooner or later.

I see there are several of them that are substantially reduced, and some of them are in the same figure. I think probably Mr. Walker did not direct any of his attention to that particular phase, though the other witness did. I was left rather confused. I should have mentioned it at the time and did not do so.



I am a little bit confused as to just what effect each of you thought that these stockholder loans had upon valuation. Don't misunderstand me. You don't need to respond at this time. You can think it over and tell me whatever you want to in the morning or you can drop it. I am only saying [224] that only vaguely do I have the theory of either of you as to the effect of these stockholder loans upon our problem of valuation. You don't need to say anything at this time. It is your case and you try it to suit yourselves.

Mr. Blum: We appreciate that observation, your Honor. As far as we are concerned, we will be happy to go into it fully for your Honor's enlightenment.

The Court: We will suspend until 9:30 tomorrow morning.

(Whereupon, at 5:00 p.m., a recess was taken until 9:30 a.m., Friday, October 5, 1945.) [225]

Proceedings October 5, 1945, 9:35 a.m.

The Court: We may proceed with the Nathan case.

Mr. Blum: May it please your Honor, yesterday at the close of the trial you suggested an interest in the indebtedness of the stockholders of the A. Hamburger & Sons Corporation. We are willing to stipulate with respect to the items which have been reduced in value for the fair market value from the book value, which are under Item I, No. 1, and

under Item J, Nos. 1, 2 and 3, that those are four indebtednesses that were notes made by the stockholders for a term of 30 years, due in 1968, a rate of interest of two per cent; that for all intents and purposes the payments would be only the interest payments until the maturity of the note. The notes providing for certain payments, but for a reduction in those payments to zero in the event the income was changed, which, as we know, was changed in 1943 when the May Company lease expired.

We attempted to arrive at a fair market value of such a long term note with the Respondent and finally determined upon a discount of 25 per cent, thereby making the fair market value of those four items 75 per cent.

The other items are either short term notes, that is, five-year notes, or open accounts.

Your Honor will recall the testimony of both Mr. Mitchell and Mr. Milliken to the effect that the stockholders [229] and the company had an arrangement whereby the earnings were anticipated and they would withdraw moneys and then when the dividends were declared those accounts would be paid.

These open accounts are those anticipations, and those have been entered in the balance sheet for the fair market value at par.

The Court: That helps to clear up some of the queries I had in mind.

Perhaps in explanation of my remarks, I will say to you valuation cases are terrible headaches to me and sometimes they are very difficult, so I

like to advise you as to any queries I may have. In ten years of trying valuation cases I have found them rather difficult sometimes to resolve, and I like to get all the help I can. I am not trying to tell you gentlemen how to try your law suit.

Mr. Tonjes: Your Honor, I can't quite agree that I stipulated to all the remarks made by Mr. Blum. But I will say that we approached the problem of attempting to arrive at a fair market value somewhat along that line. We succeeded in agreeing that 75 per cent of the long term notes did represent a fair market value. To that extent I agree with Mr. Blum.

The Court: Very well. That is helpful to us.

Mr. Blum: You said you weren't quite clear as to the weight which the Petitioner or the Respondent was giving to the notes or just how the indebtednesses, or just how they [230] were treating it. If it would be helpful at this time I would state the Petitioner's view.

The Court: I would be glad to have you do so.

Mr. Blum: It is the Petitioner's view that of the total assets of the A. Hamburger & Sons, in the amount of some three and a half million dollars fair market value without the fair market value of the Hamburger Realty Company stock owned by them, that of that amount approximately \$2,100,000.00 is represented by the fair market value of these indebtednesses; the stockholders.

The Court: How much did you say?

Mr. Blum: Approximately \$2,100,000.00. Or in excess of 50 per cent. And of that amount the long



term indebtednesses will represent well over a million dollars. I beg your pardon. Will represent about \$600,000.00, approximately.

It is our position that a purchaser purchasing the stock which we have here would give great weight to the history of the borrowings by the stockholders, all of whom were members of the family and who would be in control of the corporation after the purchaser had purchased this stock and could continue their benefit, the same borrowing policy, without necessarily including the stranger to the family, who would be the purchaser of these stocks, in that borrowing arrangement. Also, he would have a fixed asset of approximately \$600,000.00 which would pay only the two per cent interest.

*The* of life being what they are he would give, I think, greater weight to the probability of the collection of those notes 30 years hence when we know that none of the makers of those notes—we know by mortality tables, I should say, none of the makers of those notes would be alive. Who would be the owners of their assets and what dissipation or appreciation of the asset values might have been made during that time would be very, very, in our opinion, problematical. We think the purchaser would give great weight to that, hence eliminating, to a great extent, his interest in the asset value of this stock.

That is briefly the Petitioner's position with respect to these indebtednesses.

The Court: I would be glad to hear Mr. Tonjes on the same point.

Mr. Tonjes: If your Honor please, the Respondent contends that insofar as the corporation is concerned the notes and the indebtedness in question of a value of at least 75 per cent, that there has been no showing that the notes were not secured and, as a matter of fact, I believe that the notes were secured by the stock of A. Hamburger & Sons, Inc. So, insofar as the corporation is concerned, it has an obligation due it which, in its hands they can't possibly lose on it. In other words, in the event that the maker of the note cannot pay, why, the corporation has that major stock in the corporation [232] as collateral, even though the rate be comparatively small, two per cent. In view of the fact it is absolutely 100 per cent secured, insofar as the corporation is concerned, it is not worthy of any serious discount or substantial discount.

The Court: I think you gentlemen, through this colloquy, have helped to clear up a few little hazy things I had in my mind. I didn't realize what you had done, how you had arrived at the 25 per cent discount. You have cleared it up very well for me. Thank you very much.

I didn't mean to try to tell you how to try your law suit, but to point out one thing I was a little foggy about.

Mr. Blum: We appreciate that.

Mr. Walker, will you resume the stand?

Whereupon,

THERON W. WALKER

resumed his testimony as follows:

Redirect Examination

By Mr. Blum:

Q. Yesterday, Mr. Walker, on cross examination you made reference to the common stock of the Central Investment Company, and as I recall you stated that from a hazy recollection back in 1941 the stock was selling at about eight or ten dollars a share. Did you check yourself on the stock of the Central Investment Company?

A. I have. [233]

Q. Will you now tell us what you found with respect to the Central Investment Company, what kind of stock it is, what its underlying assets are and what it was selling for, and dividends and so forth it was paying, and the earnings?

A. The Central Investment Company had at the end of 1940 total assets of \$9,165,000.00. The company owned the property at the southwest corner of Fifth and Olive, which ran through to Grand.

On that property it also owned the building, which is known as the Biltmore Hotel. There was outstanding against the assets mortgage indebtedness, which had been called just shortly before the basic date in this case, \$3,600,000.00 of bonds which were refunded. But the equity in the property which is comparable to, as near a degree as one can find, I believe, in a local situation, had a price range in 1941 of a high of 25 and a low of 95/8ths.



(Testimony of Theron W. Walker.)

The stock on the basic date was selling for approximately 20; 19½ bid, 20 offered. The company's earnings for the five years ending December 31, 1941, had risen from \$2.11 in 1937 to \$3.38 in 1941.

Mr. Tonjes: You mean a share?

The Witness: Per share. Any security analyst gives substantial weight to the trend of earnings, whether it be up or down or static. The average earnings for that period were \$1.56, so that it is apparent that the '41 results were substantially better than the average. The company had a book value at the end of 1941 per share of \$93.39. So at the then price of 20 it was selling for 21.5 per cent of its book asset value and for six times the 1941 earnings. The stock, as I say, represented the equity in that substantial property.

Q. The corner of Fifth and Olive is in downtown Los Angeles; is it not?

A. Yes, sir.

Q. And the Biltmore Hotel is known as one of the two best hotels in Los Angeles?

A. I believe it is considered the commercial hotel in Los Angeles.

Q. Now, you say the stock was selling for approximately six times the 1941 earnings; is that correct?

A. That is right.

Q. And that would give a yield of what?

A. You mean a dividend or capitalization factor?

Q. I think yesterday in testifying with respect

(Testimony of Theron W. Walker.)

to A. Hamburger & Sons you said you would use both a ten times earnings and a ten times yield.

A. No. Hamburger Realty that was.

Q. Seven times earnings and fourteen point yield.

A. I used a seven times earnings on A. Hamburger & Sons, which assumes a \$25.00 dividend, provided a yield of 14.3 per cent on the base price of the stock after deducting the [235] discounted value of the prospective large dividends from 1941 and 1942 earnings.

Q. Will you tell us with respect to the Central Investment Company the dividend paying policy of the company?

A. The company had been paying no dividends for several years, up until 1941 when it went on a dividend paying basis, which it has since paid a dividend at increasing rates.

Q. What were the dividends, do you have them?

A. The dividend for the most recent full year was 1944, and they paid \$4.50 per share.

Q. That is what yield on the then selling price?

A. Well, the yield on today's or yesterday's price, the stock is quoted 85 bid, the yield on a \$4.50 dividend would be 5.3 per cent.

Mr. Tonjes: You said yesterday. Do you mean 1945?

The Witness: Yes, yesterday, 1945.

Q. (By Mr. Blum): That compares how with the Dow Jones average of the same time?

(Testimony of Theron W. Walker.)

A. For the same day it would be some 43 per cent larger than the yield available now from the Dow Jones industrial average.

Q. Applying that 43 per cent excess for the Central Investment Company stock to the Dow Jones average, applying that percentage to the A. Hamburger & Sons dividends at the [236] basic date, what result would that show?

A. Well, if we apply that same ratio to the Dow Jones industrial average yield on the base date, the Central Investment Company stock would have been yielding, had it been paying, a dividend of 10.96 per cent.

Q. Now, Mr. Walker, yesterday you were questioned with respect to the character of the assets of A. Hamburger & Sons on cross-examination, with particular reference to the Government Bonds and the Jefferson and Grand Warehouse, which warehouse was under lease to the May Company. Will you tell us with respect to the indebtednesses of the stockholders to the corporation how you analyzed those assets with respect to the value of the stock?

A. I gave considerable weight to the character of the assets. A. Hamburger & Sons had in cash in U. S. Bonds about \$749,000.00, according to the book value. The fair market value was somewhat higher. It also had certain other marketable assets, namely, the Los Angeles City High School Bonds and three or four marketable common stocks whose book value was \$209,000.00 and the fair market



(Testimony of Theron W. Walker.)

value was about equal. Against those liquid assets there was a current liability total of \$555,000.00. Thus the overage represented about 10 per cent of the total assets of the company.

On the other hand, the book value of the notes was \$2,344,000.00 and the fair market value was about \$2,100,000.00, [237] or not quite two-thirds of the total net worth at fair market values.

Any purchaser would be very much interested in the character of the assets. Any buyer who would have the money to invest in a block of stock would be pretty shrewd and would also realize what has gone forth in the past might take place in the future. He would also look at the situation such as I mentioned yesterday, a listed investment trust whose business is the ownership of liquid securities.

I can mention here the Lehman Corporation. It has no prior obligations. It is listed on the New York Stock Exchange as of June 30, 1941, 12.71 per cent of its total assets were in cash and Government Bonds. And it had a net asset value of \$28.77. Its market price was at the 1941 low 66 per cent of the June 30th asset value. The 1941 average price was 75 per cent of its June 30, 1941 price. Therefore, a buyer who was interested in liquidity and in a responsible management would have that as a measure of comparison of the character of assets.

Q. Did the Lehman Company have large loans out to its stockholders, a balance sheet showing such loans?

(Testimony of Theron W. Walker.)

A. To my knowledge, it had no such loans. I believe that would be contrary to its business practice.

Q. Is the Lehman Investment Trust a substantial investment trust? [238]

A. I think its assets ran in the twenty millions.

Q. As an investment in stocks of an investment company or investment trust, is it highly regarded in the investment field?

A. The management of the company is largely that of Lehman Brothers and their financial reputation is regarded very highly, and their financial ability.

Q. With respect to the Hamburger Realty Stock, Mr. Walker, what type of a purchaser would you think would be required? That is, one purchaser for the whole block or several purchasers for a few shares?

A. In my judgment, the most likely buyer would be a person or an institution of substantial funds, and they would be interested in the block, not in small pieces of a block.

Q. From your experience in the investment field, is a single purchaser of a substantial block apt to go into the character of the security more or less than purchasers of small share lots?

A. My experience, extending over a good many years, I found an institutional buyer or a man of means a very sharp purchaser; much more so than the individual of a medium sized income.

Q. In your opinion, such a purchaser would go

(Testimony of Theron W. Walker.)

deeply into the earnings, dividends payable policy and character of the assets and such items and factors of policy as you have mentioned?

A. Very definitely. And in addition he would take into consideration the conditions of the times that were then affecting all investments.

Q. In preparing yourself to testify in this matter, Mr. Walker, can you tell us approximately how much time you spent?

A. I would say it ran somewhat over three days.

Mr. Blum: That is all.

#### Recross-Examination

By Mr. Tonjes:

Q. Mr. Walker, describe this Lehman Trust—do you call it?

A. It is Lehman Corporation. It is an investment trust.

Q. It is a corporation?

A. It is a corporation.

Q. Sells shares of stock?

A. No. At one time it sold shares of stock, yes. But it is a closed capitalization, as we speak of it, similar to the Hamburger Realty.

Q. These interests you stated sold at certain prices. What were they?

A. They were outstanding common shares of the company.

Q. They were capital stock?

A. They were capital stock listed on the New York Stock Exchange. [240]

Q. What sort of properties did Lehman Bros. own?



(Testimony of Theron W. Walker.)

A. Largely marketable materials.

Q. What was the majority of the holdings, industrials and rails?

A. Rails, utilities and oils.

Q. Did they have any holdings stock?

A. Yes.

Q. Mostly strictly commercial institution?

A. That is right.

Q. Going back to the Central Investment Company, do you know when the Central Investment Company was organized?

A. No, I do not.

Q. Do you know when it acquired the property known as the Biltmore Hotel property?

A. As to the definite date I do not, sir. I believe it was approximately the date of the—around 1923 would be an approximation.

Q. Did the Central Investment Company own any other property, do you know?

A. Not to my knowledge, except the property that went into the operation of the hotel; that is, the fixtures.

Q. Do you know the circumstances under which they acquired that property? Did they buy it for cash?

A. I don't know.

Q. Do you know whether or not there were any encumbrances [241] on the property when they acquired it?

A. I don't know.

Q. Do you know whether it was a result of a reorganization due to the financial embarrassment of the company who owned it?

(Testimony of Theron W. Walker.)

A. There was a change in the lessor in the late '30's.

Q. What do you mean the lessor? Who owned it prior to the time——

A. The Central Investment Company owns the property.

Q. Who owned it prior to the Central Investment Company?

A. That I do not know. They may have owned it during its entire life.

Q. Do you know whether or not the Biltmore Hotel or its operators were engaged in any financial difficulty at or about the time the Central Investment Company acquired it?

A. I don't know they were.

Q. Do you know whether they acquired it in a straight transaction, that is, buyer and seller meeting, or was it the result of some reorganization?

A. I don't believe that—so far as I know they have been in no financial difficulties.

Q. Who?

A. The Central Investment Company.

Q. Do you know what the amount of encumbrance was?

A. Yes; \$3,607,000.00. [242]

Q. Do you know whether that covers both the building and the fee and the land?

A. It covered both the fee and the land.

Q. Do you know what the rate of interest is on that obligation?

(Testimony of Theron W. Walker.)

A. In 1941 the rate was six per cent.

Q. Six per cent?

A. Bond was due in 1957.

Q. The total sum of the obligation was about

how much? A. \$3,607,000.00.

Q. The owners of the common stock would have an interest in the equity over and above the \$3,607,000.00?

A. That is right. They had the equity of the property.

Q. Do you know whether there are any other obligations, second mortgages or any liens of any type or description?

A. I don't believe there were, sir.

Q. Did you make an investigation about that?

A. I looked, but I would hesitate to rely on my memory at this time.

Q. Who operated the hotel prior to the time that the Central Investment Company took it over, if anyone did?

A. I believe the Central Investment Company operated it.

Q. They operated it themselves?

A. I believe so. [243]

Q. Do you know how long they operated it?

A. No, sir.

Q. Do you know who was operating it in 1941?

A. Yes; Baron Long.

Q. Do you know how long he operated it?

A. Since 1938.

Q. About 1938? A. Yes.



(Testimony of Theron W. Walker.)

Q. Do you know the circumstances under which he took over the operation?

A. As I say, the preceding lessor had failed to meet their obligations and Baron Long made the lease with the Central Investment Company.

Q. Do you know what the earnings of the Central Investment Company were for the years 1939, 1940 and 1941?

A. On a per share basis, yes, sir.

Q. What were they?

A. In 1939 it was 61 cents. 1940, \$1.33. \$3.36 in 1941.

Q. Do you know what the stock was selling for during those same years?

A. The range in 1941 was a high of 20 and a low of  $9\frac{5}{8}$ ths. The price range for the preceding years was somewhat less than that.

Q. What year are you giving me there? [244]

A. 1941.

Q. That was between roughly, we will say, 10 and 20?

A. The low was  $9\frac{5}{8}$ ths; the high was 20.

Q. Do you know what it was for the years 1939 and 1940?

A. No, not precisely. It was less than that.

Q. Assuming, Mr. Walker, that the loans to the stockholders, that is, the long term loans were secured by the stock of A. Hamburger & Sons, would you say that that was a well secured loan?

A. That would depend on the value that was finally determined for the stock of A. Hamburger & Sons.

(Testimony of Theron W. Walker.)

Q. In the event that the obligator did not pay the corporation would not be any longer indebted to the stockholder as a stockholder; would he? That is to say, the corporation would then have the right to keep the stock and perhaps cancel it.

Mr. Blum: Objected to as asking for a legal opinion.

The Court: I think the objection perhaps is well taken.

Mr. Blum: If Mr. Tonjes wishes to reframe it in some way to bring out the same idea, without the legal opinion, all right. If he will put the legal opinion in the question and interpret it for him——

Mr. Tonjes: It is not too important. That is all, Mr. Walker. [245]

#### Redirect Examination

By Mr. Blum:

Q. Mr. Walker, was the principal income of the Central Investment Company rentals from its lease to either Baron Long or his predecessor?

A. Yes, sir.

Q. In respect to the values which you have given, the opinions as to the values you have given, both as to the Hamburger Realty and the A. Hamburger & Sons, have you assumed that the seller of the stocks would be holding out for as high a price as he could get and would be just as shrewd a seller as the purchaser would be a purchaser?

A. I have tried to set what is known as a fair market price, which, to my mind, means that the

(Testimony of Theron W. Walker.)

seller is as well informed and as shrewd as the buyer, and they are both willing to meet at some fair price.

Mr. Blum: That is all.

Mr. Tonjes: No further questions, Mr. Walker.  
(Witness excused.)

Mr. Blum: At this time, if your Honor please, the Petitioners are through with their case, with the exception of offering into evidence the amended petition to conform to the proof which was referred to yesterday at the beginning of the trial. We would like to offer those at this time. [246]

The Court: Very well.

Mr. Tonjes: You don't mean to offer them in evidence? To file them?

Mr. Blum: No; to file them.

Mr. Tonjes: No objection.

The Court: They may be handed to the clerk and they may be filed.

Mr. Blum: May the record show that I am handing the Respondent a copy?

The Court: Very well.

Mr. Blum: For the purposes of the answer, do you wish to stipulate your answer heretofore to the original may be deemed to go to the amended petition, Mr. Tonjes?

Mr. Tonjes: I would prefer to file a separate answer, your Honor, for the record.

The Court: Within what time will you probably offer it, Mr. Tonjes?

Mr. Tonjes: Ten days will be sufficient. I will



try to get it here before the Court leaves; I think I can.

The Court: If you do, it is all right. If you do not, you may send it into Washington.

Mr. Blum: May we have a short recess before the respondent starts its case?

The Court: Very well. We will suspend for a brief recess.

(A short recess was taken.) [247]

Mr. Blum: May it please the Court, may I withdraw our submission on our side and put Mr. Walker on for just one or two questions?

The Court: You may.

Whereupon,

THERON W. WALKER

recalled as a witness for and on behalf of the petitioner, having been previously duly sworn, was further examined and testified as follows:

Further Direct Examination

By Mr. Blum:

Q. Mr. Walker, is it necessary in the State of California for an investment counselor to be licensed by the State of California? A. Yes, sir.

Q. Are you so licensed?

A. Yes, sir, as a broker.

Q. Is it necessary in the State of California for a brokerage firm or stock broker to be licensed?

A. Let me correct that previous answer. We are licensed to do business as a broker, which permits us to do business as an adviser.

(Testimony of Theron W. Walker.)

Q. Is it necessary for brokerage firms or individual brokers to be licensed in the State of California?      A. Yes, sir.

Q. Is your firm licensed as a broker? [248]

A. Yes, sir.

Q. Is each individual member so licensed, also?

A. Each person, each employee who is dealing with the public is so licensed.

Q. Without such a license, you cannot deal in securities as a broker with the public?

A. No, sir.

Q. What licenses do you have, Mr. Walker?

A. Broker's license.

Q. Broker's license?      A. Yes.

Q. For the State of California?

A. Yes. The firm is also registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940. We have been registered since the Act was put into effect.

Q. And licensed in the State of New York?

A. I presume so. We have a New York office and a New York partner.

Q. You have not checked on that?

A. No.

Q. Is there any license required with respect to the New York Stock Exchange, or permission to act?

A. Well, in order to do business on the New York Stock Exchange, you must be a member of that Exchange, which requires [249] the purchase of a membership and the payment of dues thereon.

(Testimony of Theron W. Walker.)

Q. Do you have any other licenses besides the broker's license in the State of California?

A. Personally?

Q. Yes.           A. Not to my knowledge.

Q. What investment services do you or your firm take and have taken over a period of years for research?

A. Of the publicly available services we take Standard Statistics, Standard and Poor's Corporation and the Moody Manuals, which cover the various industries and their stock and bond letters, weekly.

Q. For approximately how many years have you had access to and studied these services?

A. About 20 years. In addition to these services, I might say that the firm employs two other organizations who are in the business of supplying private statistical information.

Q. You have access to those reports and their findings personally?           A. I do.

Q. And the reports and manuals which you have mentioned are considered to be the outstanding ones in the investment field?           A. Yes, sir. [250]

Mr. Blum: That is all.

Mr. Tonjes: That is all, Mr. Walker.

(Witness excused.)

Mr. Blum: The petitioner rests.



## EVIDENCE ON BEHALF OF RESPONDENT

Thereupon, the respondent, to maintain the averments on his behalf, introduced the following proof:

Mr. Tonjes: If your Honor please, at this time respondent offers in evidence the estate tax returns of Belle Alice Hamburger Nathan, to be received in this proceeding.

The Court: It may be handed to the clerk.

Mr. Blum: No objection.

The Court: It may be received as respondent's exhibit B.

(The return referred to was marked and received in evidence as respondent's exhibit B.)

The Court: I think we marked as A a decree, which has not been received in evidence. Is that correct?

Mr. Tonjes: I have that before me now, your Honor. My recollection is I asked that it be marked for identification. But the decree which was identified by Mr. Mitchell is marked for identification and also marked admitted in evidence. I now offer the document in evidence.

The Court: I think probably the marking as received in evidence may have been in error. We will receive it in [251] evidence, as respondent's exhibit A.

(The decree referred to was previously marked for identification, and received in evidence as respondent's exhibit A.)

[Respondent's exhibit A appears on pages 313 to 351.]

Mr. Tonjes: Respondent offers in evidence a document which purports to be a promissory note of the David A. Hamburger Corporation, signed by David A. Hamburger, and the document is dated January 1, 1938, and is in the sum of \$673,578.90. That is one of the loans on the balance sheet, if your Honor please.

The Court: There being no objection, it will be received as respondent's exhibit C.

(The note referred to was marked and received in evidence as respondent's exhibit C.)

[Respondent's Exhibit C appears on pages 352 to 357.]

Mr. Tonjes: Might I correct the previous offer, your Honor, and state that it is a photostatic copy?

Respondent offers in evidence a photostatic copy of what purports to be an obligation to pay the sum of \$66,027.85, which is dated January 1, 1939, and is signed by Belle A. H. Nathan.

The Court: It may be received as respondent's exhibit D.

(The obligation referred to was marked and received in evidence as respondent's exhibit D.)

[Respondent's exhibit D appears on pages 357 to 362.]

Mr. Tonjes: Respondent offers in evidence photostat [252] copy of what purports to be a note in the sum of \$150,899.40, dated January 1, 1936, and bearing the signature of Jennie H. Marx.

The Court: It may be received as respondent's exhibit E.

(The note referred to was marked and received in evidence as respondent's exhibit E.)

[Respondent's exhibit E appears on pages 363 to 368.]

Mr. Tonjes: Respondent offers in evidence what purports to be a promissory note dated January 1, 1938, in the amount of \$98,736.80, and it is signed by Evelyn Hamburger.

The Court: It may be received as respondent's exhibit F.

(The note referred to was marked and received in evidence as respondent's exhibit F.)

[Respondent's Exhibit F appears on pages 369 to 374.]

Mr. Tonjes: Let the record show the last document is also a photostat copy, your Honor.

I will call Mr. Allen to the stand, please.

Mr. Smith: If your Honor please, I was hoping our case would finally be closed. It is my error. I had inquired of Mr. Walker of certain things and I didn't impart it to my associate counsel who examined him. I wonder if we could ask him one more question?

Mr. Tonjes: No objection.

The Court: Very well. [253]

Whereupon,

THERON W. WALKER

recalled as a witness for and on behalf of the petitioner, having been previously duly sworn, was further examined and testified as follows:

Further Direct Examination

By Mr. Smith:

Q. I will ask you if you are registered or licensed by the New York Stock Exchange?



(Testimony of Theron W. Walker.)

A. Yes, each employee of the New York Stock Exchange firm in order to take orders from the public must pass an examination, written examination as to his investment experience and knowledge, ability to analyze statements of corporations and it also involves the man's character and record.

Q. You passed that examination?

A. I passed that examination.

Q. And are so registered?

A. So registered.

Q. Over what period of years?

A. Since January, 1940.

Q. January 1940?           A. Yes.

Mr. Smith: That is all. Any cross-examination, Mr. Tonjes?

Mr. Tonjes: No. That is all.

(Witness excused.)

Mr. Tonjes: Mr. Allen, will you take the stand?

Whereupon,

EDWARD H. ALLEN

called as a witness for and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you please state your full name for the record?

The Witness: Edward H. Allen.

Q. (By Mr. Tonjes): Where do you live, Mr. Allen?           A. Los Angeles.

(Testimony of Edward H. Allen.)

Q. How long have you lived here?

A. 58 years.

Q. What is your business at the present time?

A. Appraiser.

Q. In that connection, what type of properties do you appraise?

A. All types of real estate and practically all types of personal property.

Q. Does that include securities, corporate stocks and things of that nature?      A. Yes, sir.

Q. You are an attorney, Mr. Allen?

A. Yes, sir. [255]

Q. You are admitted to the bar to practice in the State of California?      A. Yes, sir.

Q. Since when?      A. 1909.

Q. Will you please state in a general way your educational background?

A. I attended the common schools here. In 1906 I entered the University of Southern California, College of Law, and was graduated from that institution in 1909 and was admitted to practice in the State Courts and also in the Federal Courts. And I am still a licensed attorney.

Q. In that connection, have you in your business as an appraiser ever appeared in any of the local courts and testified as an expert?      A. Yes, sir.

Q. What was that in connection with, the appraisal of securities, that is, stocks of corporations?

A. Yes, sir.

Q. And also of real property?

A. Yes, sir.

(Testimony of Edward H. Allen.)

Q. Well, could you tell us in a general way what that has consisted of and what courts you have testified in?

A. Both in the State Courts and the Federal Courts, and before the Board of Tax Appeals. [256]

Q. Have you also had occasion to appraise the value of corporate stocks in closed corporations?

A. Yes, sir.

Q. Have you appraised the stocks of closed corporations which were primarily real estate holdings?

A. Yes, sir.

Q. Did you ever have any connection with the State Board of Equalization? A. Yes, sir.

Q. Just what was that connection? First, what is the State Board of Equalization?

A. Well, that is a division of the State of California and consists of a commission and has many duties, but one of their duties is to have general State supervision over county assessors throughout the State. I was employed with them for a period of eight years to see that the fair market value of real estate in this locality was consistent. That is, that the taxpayer owning, say, a commercial property wasn't paying any more taxes per dollar of market value than the man that owned a home or the man that owned an industrial property or the man that owned farm property.

Q. Were you ever employed by the State Corporation Commissioner? A. Yes, sir.

Mr. Smith: If your Honor please, I assume this is an [257] examination for qualifications. I



(Testimony of Edward H. Allen.)

haven't ascertained an answer yet that would indicate the witness possesses any qualifications. There is no date involved. We haven't had a date from this witness. Here is the State Board of Equalization; that happened 15 years ago. It might not give this witness any qualifications here at all as to the basic date.

I assume we will make an objection to his testimony, his testifying here because of absence of qualifications. I was wondering how your Honor——

The Court: I take it there is no objection at this time to any question which is pending; is there?

Mr. Smith: Beg pardon?

The Court: You are not at this time, are you, objecting to any question?

Mr. Smith: No. I felt it might simplify the matter, unless I can have the privilege of taking him on voir dire to bring out some of the dates that might be helpful.

The Court: At the proper time you may, if you desire, after the qualifying questions have been asked the witness, go into his qualifications and examine him on voir dire. You may do so at the proper time.

Mr. Smith: I appreciate that.

Q. (By Mr. Tonjes): How long have you been acting as an appraiser, Mr. Allen? [258]

A. For over 30 years.

Q. Were you so engaged in the last 15 years, 1930 to 1945 continuously?

A. I have been for over 30 years continuously an appraiser.

(Testimony of Edward H. Allen.)

Q. When were you employed or when did you have this connection with the State Board of Equalization?      A. About 1924.

Q. How long did that continue?

A. For eight years.

Q. When were you connected with the State Corporation Commissioner?

A. Oh, from the period 1925 to 1940.

Q. What was the general nature of your duties there?

A. Appraising properties on which the owners of the properties intended to issue securities.

Q. Were you ever employed by the State Superintendent of Banks?      A. Yes, sir.

Q. About what years?

A. From about 1924 or '25 to 1933 or '34.

Q. What were your general duties there?

A. Appraising properties that were held in trust by State Banks for various purposes, generally when they desired to sell the property, trade the property or exchange the [259] property for other assets.

Q. In that connection did you appraise and place a value upon corporate securities?

A. No, I was appraising the real estate.

Q. The real estate?      A. Yes.

Q. Have you been employed by the City of Los Angeles?      A. Yes, sir.

Q. When was that?

A. From about 1927 or 1928 until 1932 or '33; a period of about five years.

(Testimony of Edward H. Allen.)

Q. Your duties there were what, Mr. Allen?

A. Appraising real estate in what is known as the major traffic plan, opening and widening of the major arteries in the city, like Broadway, Wilshire Boulevard, Figueroa Street, Washington Street, Olympic Boulevard and Tenth Street, and others.

Q. Were you ever employed in connection with any of the work in the local Probate Courts?

A. Yes, sir. I started probate appraising—I did a little of it in 1909. In 1914 I was appointed a regular Probate Court appraiser in this county. I received approximately 35 appointments per month, that is, I was appointed to appraise 35 estates a month. I continued in that work for a period of 14 years. In that length of time I appraised between five and six thousand estates.

Q. In that connection did you appraise corporate securities and stocks?

A. Appraised all the assets that were in the estate.

Q. Did that include common stocks of corporations?

A. All kinds of stocks and securities, and interest.

Q. Family holding corporations?

A. Yes, sir.

Q. Did some of those family holding corporation assets consist primarily of real estate?

A. Yes, sir.

Q. Were you ever employed by any of the local banks or trust companies?



(Testimony of Edward H. Allen.)

A. Yes, sir, I have been employed by all the local banks over a period of the past 25 years.

Q. In what capacity?

A. Appraising assets, securities, real estate.

Q. Will you name a few of them, please? I don't think it is necessary, Mr. Allen.

Mr. Allen, have you been employed to make an appraisal and a determination of your opinion with respect to the fair market value on October 13, 1941, of certain shares of the capital stock of the Hamburger Realty Company and A. Hamburger & Sons, Inc., which was owned by Belle Alice Hamburger Nathan on October 13, 1940, as of October 13, 1941?

A. Yes, I have.

Q. Did you make certain inquiries and examinations in connection with that matter?

A. Yes.

Q. Have you arrived at a conclusion?

A. Yes, sir.

Q. Mr. Allen, I have just handed you the stipulation of facts in this case, which has attached to it Exhibits numbered 1 to 9, inclusive, and I ask you if you were furnished with a copy of that stipulation and copies of all of the exhibits which are attached thereto?

A. Yes, sir.

Q. Have you made a study of that stipulation and all of the exhibits?

A. Yes, sir.

Q. Are you familiar with their contents?

A. Yes, sir.

Q. Now, you have stated that you have reached a conclusion with respect to the fair market value of the capital stock of the Hamburger Realty Com-

(Testimony of Edward H. Allen.)

pany. Would you please tell the court, in a general way, what factors you considered in arriving at your conclusion?

A. I took into consideration, in arriving at that conclusion, all the information that is contained in these exhibits as to the history of the corporation, as to its assets. [262] I took into consideration the history of the assets in this area, which I have known as an appraiser over 30 years, that is, the real estate holdings of the concern. I took into consideration the securities they owned. I have known the history of those companies as long as I can remember, or as long as they have been in existence, I might say.

I took into consideration the tenancy of their main property, that is, the May Company. I took into consideration all my experience in appraising securities of this type, that is, what you call a closely held or a family holding corporation or a corporation in which there are only a few stockholders, plus all my experience in appraising properties of this type.

Q. Did you take into consideration the earning capacity of the corporation, as set forth in the stipulation?

A. I did. I gave a great deal of consideration to the earnings of the corporation over its lifetime.

Q. Did you also give consideration to the anticipated profits the corporation might reasonably expect?

A. I took into consideration those factors, yes, sir.

(Testimony of Edward H. Allen.)

Q. You took into consideration the past record of the corporation?

A. Yes, sir. And the corporations in which they own securities, also.

Q. Did you also take into consideration the value of [263] the underlying assets? A. Yes, sir.

Q. You might state, Mr. Allen, how you interpret the phrase "underlying assets."

A. Underlying assets, in a corporation of this character, is the value of the securities that they own, the value of the real estate they own, less any indebtedness against them; what you might call the net worth or the net fair value of the securities or the real estate.

Q. You also took into consideration the actual value of the underlying assets; did you?

A. Yes, sir.

Q. Did you take into consideration the dividends paid by the corporation over a period of years? A. Yes, sir.

Q. Did you take into consideration whether the corporation was engaged in business or was primarily a holding company? A. Yes, sir.

Q. Did you take into consideration whether the corporation was in the process of liquidation or might be reasonably expected to continue its activities indefinitely? A. Yes, sir.

Q. Did you take into consideration the general market conditions? [264] A. Yes, sir.

Q. The management? A. Yes, sir.

Q. And whether or not the block of stock being



(Testimony of Edward H. Allen.)

valued is a minority interest?           A. Yes, sir.

Q. Whether the stock is in a closed corporation?

A. Yes, sir.

Q. Did you take into consideration that both Federal and State taxes would have to be paid on the earnings?           A. Yes.

Q. And on the property?           A. Yes, sir.

Q. Well, what else did you consider in arriving at your conclusion, Mr. Allen?

A. I believe that states practically all the things that were taken into consideration in arriving at this opinion.

Q. In arriving at your determination of the fair market value of the stock in question, have you been influenced to any extent by the determination of the value made by the Commissioner of Internal Revenue with respect to this stock?

A. No, sir.

Q. I gather, Mr. Allen, that you weighed all the facts which are contained in the stipulation and the exhibits attached? [265]           A. Yes.

Q. And in accordance with your general experience gathered not only in this case, but over the years by you personally, and took into consideration all of the other elements with respect to which you have testified, and on the basis of such facts have reached an opinion with respect to the fair market value of the shares of the capital stock of the Hamburger Realty Company owned by Belle Alice Hamburger Nathan on October 13, 1940, as of October 13, 1941?           A. Yes, sir.

(Testimony of Edward H. Allen.)

Q. Will you please tell the court what your opinion is?

Mr. Blum: Objected to as incompetent, irrelevant and immaterial. The witness has not shown qualifications to express an opinion on stock. Generally he has stated only with respect to stock that he has valued, some stocks for the State of California, as a probate appraiser from 1914 to 1928. He has never appraised, while employed by the City of Los Angeles any stocks. For the State Banking Commissioner it was real estate only. The State Department of Corporations, it was appraising properties on which securities were to be issued, not the securities themselves. The Board of Equalization it was to see that values were equalized. That is, real estate values.

He has not shown any qualifications to do any appraisal work except of real estate. We object to the answer [266] to the question.

The Court: Your objection will be overruled. I think I would like to ask one or two questions.

First, I don't know whether I followed counsel's question correctly. Are you now addressing your questions to the Hamburger Realty Company or to the A. Hamburger & Sons, or to both? Did I follow you?

Mr. Tonjes: No. The Hamburger Realty.

The Court: You are just addressing it to the Hamburger Realty Company?

Mr. Tonjes: That is correct, your Honor, yes.

The Court: I may have overlooked what you

(Testimony of Edward H. Allen.)

were saying in your examination. Now, one other question. Were you present throughout the trial of this particular case and did you hear Mr. Mitchell and Mr. Sparks and Mr. Milliken and the other gentlemen testify?

The Witness: Yes, your Honor.

The Court: What has been your experience in examining stocks generally of corporations?

The Witness: Well, as I stated, for 14 years I was a regularly appointed Probate Court appraiser.

The Court: For what purpose did you appraise stocks, if any, in that connection?

The Witness: In that connection we often had an estate where it was a family holding corporation of only three [267] or four or five members, and that corporation owned real estate, it owned stocks and it owned bonds and it had interests in other corporations.

We had to appraise the assets, had to appraise the real estate, had to appraise stock, had to appraise everything that was in that corporation.

The Court: For what purpose?

The Witness: To determine what the minority interest was worth. For instance, the Times-Mirror Company here, one of the largest corporations in town, we often had estates that had five or ten shares of stock in that corporation.

The Court: It is my opinion the witness is shown qualified to express an opinion. I will overrule the objection.



(Testimony of Edward H. Allen.)

Mr. Smith: May we take him on voir dire before he answers that question?

The Court: You may.

Mr. Smith: Mr. Allen, as I understand, you went from high school directly into law school?

The Witness: Yes, sir.

Mr. Smith: You had no pre-law in college?

The Witness: No, sir. There was no such thing in 1906 as that.

Mr. Smith: They had such a thing, but it wasn't required at that time. It wasn't required, is that what you mean? [268]

The Witness: No. There was no institution I know of in 1906 that had any pre-anything.

Mr. Smith: They had an A.B. Degree, didn't they? And an A.M. Degree, which would equip you and give you a foundation for your law at that time?

The Witness: Yes, sure. The more education you have the better off you are, to start anything. They didn't have any pre-training in my time.

Mr. Smith: You are not licensed in the investment field in any way?

The Witness: No; I am a licensed real estate broker, that is all.

Mr. Smith: When did you cease practicing law?

The Witness: After the first war. I took up this appraising in 1914. I had a little practice until the war. I went into the Army and when I went in the Army I didn't attempt to practice law again.

(Testimony of Edward H. Allen.)

Mr. Smith: You haven't practiced law since 1920?

The Witness: 1919.

Mr. Smith: As a probate appraiser you functioned in conjunction with an inheritance tax appraiser?

The Witness: There were two Probate Court appraisers and one inheritance tax appraiser.

Mr. Smith: You were never an inheritance tax appraiser? [269]

The Witness: No.

Mr. Smith: At that time you did not play any part in the completion of the inheritance tax reports on estates?

The Witness: No.

Mr. Smith: So during that period you made no appraisals for tax purposes?

The Witness: Well, they were all—all our appraisal taxes were based on that, attorneys' fees, executors' fee; that was the purpose of it.

Mr. Smith: They had inheritance tax hearings, did they not, that you had nothing to do with and wasn't that for the determination of the tax, and that the appraiser, the inheritance tax appraiser that acted with you that was entirely his duty?

The Witness: Yes, it was based on the appraisal I put on it.

Mr. Smith: Sometimes it was.

The Witness: I never knew it to vary once or twice in five thousand cases.

Mr. Smith: You don't know that during that

(Testimony of Edward H. Allen.)

time many objections were filed to inheritance tax reports, that were prepared and filed by the inheritance tax appraiser alone?

The Witness: Oh, sure, there are always objections.

Mr. Smith: You played no part in the inheritance tax report, I think you said. [270]

The Witness: I had nothing to do with that angle of it.

Mr. Smith: From that time, 1914 to 1928, was it not the uniform policy of the appraisers, where you had stock in a closed corporation, to merely look at the underlying assets and apportion them among the stockholders, and that was your answer?

The Witness: Apportion them among the stockholders?

Mr. Smith: To get the value of the stock, I mean.

The Witness: We had to appraise the stock because that was in the estate.

Mr. Smith: The stock of a closed family corporation?

The Witness: We appraised all the assets.

Mr. Smith: I am not asking you that question at all.

The Witness: Pardon me.

Mr. Smith: Confine your answer to assuming that is a closed family corporation stock in the inventory similar to that of the Hamburger Realty Company or the A. Hamburger & Sons, and there was a 10 per cent interest represented of the issue



(Testimony of Edward H. Allen.)

in outstanding stock in the inventory; didn't you appraise, merely go and take the value of the underlying assets and apportion them, 10 per cent of them on your inventory of the value of that stock? Wasn't that instructions you carried out? [271]

The Witness: No, sir. Nobody ever instructed me at any time how to appraise property in that work.

Mr. Smith: I am asking did you do it that way?

The Witness: No.

Mr. Smith: Wasn't it uniformly done that way?

The Witness: No, never.

Mr. Smith: How did you make your appraisals in probate at that time?

The Witness: When we had a closed corporation we appraised all its assets, all the assets of the corporation and deducted the liabilities, if any, and put a value upon each share of stock. If the estate had five shares or ten shares, that was the value, the market value we arrived at at all times.

Mr. Smith: That is right. Now, let us confine your answers, please, to what your experience and your activities as a broker or as an appraiser were from 1939 until this time.

The Witness: 1939?

Mr. Smith: Yes. Just say January 1, 1939. What appraisals have you made since January 1, 1939, for the Corporation Commissioner of this State?

The Witness: I don't know right down to dates. If you will take two or three years subsequent to that—I don't recall any. [272]

(Testimony of Edward H. Allen.)

Mr. Smith: I mean from 1939, you don't recall any appraisal you made for the State Corporation Commissioner?

The Witness: No.

Mr. Smith: For the Banking Commissioner of this State?

The Witness: No.

Mr. Smith: None?

The Witness: No.

Mr. Smith: For the Board of Equalization?

The Witness: No.

Mr. Smith: None. What case have you appeared and testified in in relation to taxes since 1939?

The Witness: I don't understand "taxes."

Mr. Smith: Where taxes were involved. To determine a value in taxes, we will put it that way; for tax purposes.

The Witness: Since 1939?

Mr. Smith: Yes.

The Witness: Well, as I recall, in that matter—you mean matters like this?

Mr. Smith: Yes, matters of this type.

The Witness: I think only before this court is the only court I have been in, the Board of Tax Appeals.

Mr. Smith: Were you in this court in the Los Angeles Stock Exchange case?

The Witness: Yes. [273]

Mr. Smith: You testified in that case?

The Witness: Yes.

(Testimony of Edward H. Allen.)

Mr. Smith: Did you testify for the Government in that case?

The Witness: Yes, sir.

Mr. Smith: Do you know of any other cases where you testified?

The Witness: In 1939?

Mr. Smith: Yes.

The Witness: Yes, I have been in four or five of them, but I forget what they were now. I don't think there is a year since 1934 that I haven't been employed by the Government as an appraiser.

Mr. Smith: So you think you have testified before the Board of Tax Appeals or the Tax Court on questions of value once a year?

The Witness: I would say so. I don't recall whether I have been employed by the Treasury Department. Many times where it never went to the court, you know.

Mr. Smith: I mean testifying, to appear to testify.

The Witness: I think pretty near every year; there might be one year in there I didn't.

Mr. Smith: Last year what case did you testify in, or the year before?

The Witness: I can't recall now. [274]

Mr. Smith: You don't remember?

The Witness: Remember that case Mr. Crouter had?

Mr. Smith: That was the Los Angeles Stock Exchange that Crouter had.

The Witness: Yes.



(Testimony of Edward H. Allen.)

Mr. Smith: That was this year.

The Witness: Was that this year?

Mr. Smith: That was in February of this year.

The Witness: I don't recall the others now.

Mr. Smith: Now, in these cases in which you have testified since 1939, did you testify in any of them in relation to the value of a corporate stock?

The Witness: No, they were all, as I recall it, real estate values.

Mr. Smith: They were all real estate?

The Witness: Yes.

Mr. Smith: And you held yourself out in those cases as being entirely, confining your time and attention to appraisal of real estate; did you not?

The Witness: You mean I conveyed that impression?

Mr. Smith: Yes, sir.

The Witness: I wouldn't say that.

Mr. Smith: You wouldn't say that?

The Witness: I was just questioned about my experience in appraising real estate. I wasn't qualifying as [275] a stock expert in that case.

Mr. Smith: Well, you were asked—I will show you what purports to be the official record of the proceedings of the United States Tax Court in the case of Los Angeles Stock Exchange Building; the Petitioner vs. Commissioner of Internal Revenue, Docket No. 2899.

I will ask you to examine particularly pages 283, where your testimony began, and 284. I would like to question you, if I may, relative to your answers .

(Testimony of Edward H. Allen.)

to questions there concerning your qualifications.

The Witness: Yes, sir.

Mr. Smith: Did you at that time under oath give the following answers to this question:

“Q. What have you chiefly been doing since the last war? You mean the first World War? World War 1.” That is the question.

“A. Yes, I have been devoting all my time to real estate appraising.”

The Witness: Yes, sir. Would you let me read the other answer, though?

Mr. Smith: Yes, I want you to read anything you want.

The Witness: “In the year 1914 I was appointed a regular Probate Court appraiser in this County.” That is where I tell about appraising securities.

Mr. Smith: That was away back in 1914 to 1928.

The Witness: Yes, but if you read it all it goes down to the present time.

Mr. Tonjes: What page is that?

Mr. Smith: I will ask you to read out of there what you want, what you can read that will harmonize with this other answer.

The Witness: “Will you tell us in a general way what that has consisted of and to what courts or in connection with what case that related to?”

“A. In the year 1914 I was appointed a regular Probate Court appraiser in this County. I received approximately 35 appointments each month to appraise all the assets in the estates of deceased persons. I continued in that work for 14 years. In

(Testimony of Edward H. Allen.)

that time I appraised between five and six thousand estates and properties of all kinds and descriptions scattered all over Los Angeles County and throughout Southern California."

Mr. Smith: Therefore, you think that qualifies your answer, that "Yes, I had been devoting all my time to real estate appraising"?

The Witness: Certainly. Real estate appraising takes in everything. I have to find out what the real estate is worth before I can tell you what the stock against it is worth.

Mr. Smith: What did you have at issue in this case [277] you testified concerning?

The Witness: There was the value of the building, the land and building at 639 South Spring.

Mr. Smith: Your testimony had to do entirely with real estate in that case?

The Witness: That is what I was employed for, to express an opinion as to the value of that real estate.

Mr. Smith: Stock was involved, though, as an element in the value in this Los Angeles Stock Exchange case, too; was it not?

The Witness: Oh, yes, it was my appraisal on which the stock was determined. But I was only appraising the real estate. That is a mathematical calculation. They didn't call upon me to do that.

Mr. Smith: Your appraisal of the real estate you indicated was a mathematical calculation for that purpose?

The Witness: Why, certainly.

Mr. Smith: What do you mean by that?



(Testimony of Edward H. Allen.)

The Witness: If the real estate was worth \$100,000.00 and there was a thousand shares of stock out against it, what was the share of stock worth? They didn't call on me; anybody can figure that.

Mr. Smith: What was it worth?

Mr. Tonjes: That is objected to as being immaterial, your Honor. [278]

The Court: I think the examination is helpful, yet I think I will permit the witness to answer the question which has been asked of him, and then under cross-examination, of course, you may proceed with whatever you desire.

Mr. Tonjes: The point is, your Honor, I think the parties have been misinterpreting or have misstated themselves. I think Mr. Smith said, "You appraised the real estate on a mathematical formula." And I think the witness began to answer that question.

Mr. Blum: It was objected to.

Mr. Tonjes: I don't think that that was the thought that Mr. Allen conveyed. He said that the ultimate determination of the stock value would be a mathematical formula, which he wasn't required to make.

The Court: Of course, the record will show what his answer was. You may proceed with the direct examination of the witness.

Mr. Blum: You mean for Mr. Tonjes to proceed?

The Court: Were you through?

(Testimony of Edward H. Allen.)

Mr. Smith: I was going to ask a couple of more questions.

The Court: I think it would be more appropriate on cross-examination rather than on the voir dire.

Mr. Smith: Very well.

Q. (By Mr. Tonjes): Will you answer the question which was objected to, Mr. Allen? I think the question was will you please state what your opinion is as to the fair market value of the stock of the Hamburger Realty Company on October 13, 1941.

Mr. Blum: To which we renew our objection on the same grounds.

The Court: The objection will be overruled.

The Witness: \$3,900.00 per share.

Q. (By Mr. Tonjes): Your answer was \$3,900.00 per share? A. Yes, sir.

Q. Mr. Allen, were you employed to make an appraisal and determination of your opinion with respect to the fair market value on October 13, 1941, of certain shares of the capital stock of A. Hamburger & Sons, Inc., which were owned by Belle Alice Hamburger Nathan on October 13, 1940, as of October 13, 1941? A. Yes, sir.

Q. In that connection did you make certain inquiries and examinations in connection with that matter? A. I did, yes, sir.

Q. Did you arrive at a conclusion?

A. Yes, sir.

(Testimony of Edward H. Allen.)

Q. You examined the stipulation, a copy of which has been furnished you, and examined that stipulation and all the [280] exhibits attached thereto? A. Yes, sir.

Q. And you are familiar with all the facts contained therein as they relate to the value of the A. Hamburger & Sons, Inc., stock? A. Yes, sir.

Q. Now, with respect to your determination of the value of the stock of A. Hamburger & Sons, Inc., will you please tell the court in a general way what factors you considered in arriving at your conclusion?

A. I took into consideration, in arriving at the value of this stock, all the matters that I did in the previous mentioned corporation. The assets in this corporation are a little different than they are in the other corporation. They consist, though, of real estate and stocks.

I took into consideration all the elements that I have stated that are in the stipulation, and the exhibits. I took into consideration the history of this company, the history of its assets, the number of shareholders in this corporation, their background and their history, their ages and so forth, and all the matters that have been mentioned or testified to here in court, plus all my experience in appraising securities of this type.

Q. Did you also take into consideration the earning capacity? [281]

A. Yes, sir, the dividends that have been made and the money earned during the years.



(Testimony of Edward H. Allen.)

Q. Anticipated profits, earnings and income?

A. The future of the company, yes.

Q. The past record of the company?

A. Yes.

Q. The book value of the underlying assets?

A. Yes.

Q. Also the actual value of the underlying assets?      A. Yes.

Q. The dividends paid?      A. Yes.

Q. Whether the corporation was engaged in business or was a real estate holding corporation?

A. Yes, sir—well, I wouldn't necessarily say a real estate holding corporation.

Q. Yes. I think that is correct. You took into consideration the types it owned?      A. Yes.

Q. Whether the corporation was in process of liquidation or expected to continue its activities indefinitely?      A. Yes, sir.

Q. Did you take into consideration the general market conditions?      A. Yes, sir. [282]

Q. Did you take into consideration the management?      A. Yes, sir.

Q. And the prospective, if any, changes in the management?      A. Yes, sir.

Q. Did you take into consideration whether or not the stock value was a minority interest?

A. Yes, sir.

Q. Whether or not the stock was stock in a closed corporation?      A. Yes, sir.

Q. Did you take into consideration the fact that both Federal and State taxes would have to be paid on its income?      A. Yes, sir.

(Testimony of Edward H. Allen.)

Q. Then you took into consideration all of the facts stipulated and set forth in that stipulation, and as shown by all of the exhibits attached thereto?

A. Yes, sir.

Q. And applying the knowledge and information you gained over the past years, to which you have testified, you arrived at a conclusion?

A. Yes.

Q. With respect to the fair market value of this stock, which was owned by Belle Alice Hamburger Nathan on October 13, 1940, as of October 13, 1941?

A. Yes, sir.

Q. Will you please state what that opinion is?

Mr. Blum: Objected to as incompetent, irrelevant and immaterial. The witness is not qualified to state an opinion as to the value of the stock.

The Court: Overruled.

The Witness: \$1000.00 per share.

Mr. Tonjes: Thank you, Mr. Allen. You may cross-examine.

### Cross-Examination

By Mr. Blum:

Q. Mr. Allen, I show you Exhibit 1 attached to the stipulation of facts, and with respect thereto show you the net worth of the fair market value, which is \$3,927,153.64. Do you see that figure?

A. Yes, sir.

Q. I refer you to Paragraph 7 of the stipulation of facts, which shows there were 1000 shares of Hamburger Realty Company issued and outstanding on the basic date.

A. Yes.

(Testimony of Edward H. Allen.)

Q. I ask you if in arriving at your value of \$3900.00 you didn't take this \$3,927,153.64 and divide by one thousand shares?

A. I took that into consideration. That would be \$3927.00, I think, would be the figure exactly; wouldn't it? [284]

Q. Yes. And you reduced the figure to \$27.00, to bring it down to a round figure; is that correct?

A. I wouldn't say that. I don't think in putting a value on a stock in a closed corporation that that stock would sell for \$3927.15. I think it sells like any other personal asset; it sells in round figures.

Q. But the net result of your arriving at the value of \$3900.00 was to divide the fair market net worth by the thousand shares and bring it down to a round figure, because that is what you think the stock would sell for?

A. In my opinion, that stock on that day would have sold for at that time.

Q. That is what you arrived at on that date.

A. That is what I tried to do, what it would sell for or the fair market value of it. In my opinion, that was the fair market value of it.

Q. You say you took into account the earnings of the Hamburger Realty Company during the lifetime of the company, I believe were the words you used; is that correct?

A. Yes. I can't say that. I only have them back over a period of six or seven years. But from my knowledge of the lease and their business and one thing and another I know it has extended way back



(Testimony of Edward H. Allen.)

until—well, previous to 1923, way back, as a matter of fact, clear back to 1910 and '11.

Q. In other words, you are injecting into your valuation [285] the fact that A. Hamburger & Sons was an old department store here; is that correct?

A. Yes. I can remember it was the first store I ever remember 50 years ago.

Q. What relation would the fact that A. Hamburger & Sons was a department store have to the value of the Hamburger Realty Company stock, which was not the department store?

A. Because they were two pockets of the same family, a family-held closed corporation. Evidence shows here in all their dealings that they were both family corporations, with the exception one had, I think, six stockholders and the other had five; they were interrelated.

Q. Do you know who owned the stock on January 1, 1940, from your own knowledge?

A. Aside from figures, records?

Q. From your own knowledge or any other way, do you know who owned the stock on January 1, 1940?

A. In the Hamburger Realty Company?

Q. Either the Hamburger Realty or the A. Hamburger & Sons.

A. I couldn't answer that, I wouldn't know.

Q. Who owned the stock—

A. Unless I saw the books.

Q. Do you know who owned the stock in 1923?

(Testimony of Edward H. Allen.)

A. Not of my own knowledge. I never inspected their [286] books. I do know it has been in the family.

Q. How do you know in 1923 or prior to 1923 they were two family holding corporations and two pockets, money going from one to the other?

A. As I say, I know the family always owned the stock.

Q. How do you know that?

A. From general information and general knowledge. I have lived here for over 50 years, and I know the Hamburger family, its background and its history and the history of that property since 1907, when they moved down there, when they bought the property. It is just things like you know there is a Standard Oil Company. I have no knowledge of the records of the owners of the stock, unless I look at it.

Q. You have injected that into your fair market value of the Hamburger Realty Company stock as of October 13, 1941; is that correct? That is, that general knowledge you had of the Hamburger family.

A. Oh, no, no.

Q. You haven't? A. No.

Q. Now, I believe you stated you took into account the earnings of the Hamburger Realty Company. Presumably you meant the earnings as shown by Exhibit 2; is that correct?

A. Yes, sir.

Q. Will you show us how and in what manner you used those [287] earnings in arriving at the value of \$3900.00?

(Testimony of Edward H. Allen.)

A. I gave those earnings the consideration, a lot of consideration because they show what was returned from the assets that are in the A. Hamburger & Sons, which consists of some 29 parcels of real estate, consists of securities with a few exceptions, which are A-1, in my opinion. And these earnings that are reflected from that are evidence to me that the years that are shown here, it could be expected that those earnings would continue, with the exception of the loss of the \$18,000.00 a month as termination of the 20-year lease. Using those as a basis of earnings against the worth, actual worth, market value worth of the assets; all were used in arriving at the opinion that I have expressed as to the value of the stock.

Q. Well, just how did you arrive, how did you use that income, though? I understand you gave it consideration. You probably read Exhibit 2 maybe a dozen or fifteen times. But how did you give it consideration in arriving at the value of \$3900.00? Did you use any capitalization figure of income to arrive at \$3900.00?

A. Oh, no. I took that—yes, I took into consideration——

Q. Which is it, yes or no? Did you use any capitalization figure?

A. In arriving at the value?

Q. The value of \$3900.00. [288]

A. No, I never could do that and express an opinion on the witness stand, because that is not my opinion, if it is a mathematical calculation.



(Testimony of Edward H. Allen.)

Q. Have you ever valued a stock of any corporation in any manner other than valuing the underlying assets of that corporation and dividing—strike that. Have you ever valued the stock of any corporation by valuing the underlying assets of the corporation, deducting therefrom the liabilities of the corporation, arriving at its fair market value net worth and dividing that fair market value by the number of shares outstanding?

A. Did I ever do that otherwise?

Q. Have you ever valued the stock of a corporation, other than in that manner.

A. Yes, indeed. I don't know as I ever used that manner.

Q. Give us one instance in which you valued the—first, let me ask you this: When you say that you couldn't use the income in arriving at the stock, value of the stock, and then come on the witness stand and testify because the value of the stock is a mathematical formula, explain what you mean by that.

A. Because that isn't an appraisal. Say, a stock is paying \$6.00 a year. That is 6 per cent on \$100.00; isn't it? Now, that stock may be selling for \$40.00 a share or it may be selling for \$150.00 a share. What has \$6.00 got to do with it? [289]

Q. In other words—

A. I am employed to express an opinion of what these things are worth. If a stock is listed on the Stock Exchange you don't need to ask me what it is worth; it shows of record. What I am called upon,

(Testimony of Edward H. Allen.)

in this matter to appraise, is the assets. Most of the cases that we get in on, to appraise the value of the stock and closely held corporations, there is no income at all. Just because the stock or property doesn't have any dividend record or anything, doesn't mean it doesn't have value or market value.

Q. Tell me what you mean by mathematical formula?

A. Mathematical formula is to take six per cent or five per cent or three or any other percentage and say that an income of \$4.00 or \$10.00 is a certain percentage of a certain amount.

Q. Is that the way you valued this stock, by mathematical formula? A. No, no.

Q. I believe you said the value of a closed corporation is simply a mathematical formula and you couldn't capitalize the income. What do you mean by valuing the stock of a closed-family corporation, holding or otherwise, by use of a mathematical formula?

A. Mathematical formula would be if you determined, for instance, that the net assets and the net worth were, say, \$100,000.00, and there were 1,000 shares; each share would be \$100.00. But that comes after the establishment of the value. That comes afterwards. That is just a matter of a pencil and paper; that is all.

Q. In other words, it is your statement that at first you have to find the fair market value of the assets owned by the corporation? A. Yes, sir.

Q. And that that is the one and important fea-

(Testimony of Edward H. Allen.)

ture in valuing the stock of a family corporation?

A. You have to know what the net worth is, to start with.

Q. After you find that net worth it is merely a mathematical calculation, by dividing the number of shares outstanding into that, which will give you the fair market value of that stock?

A. That is correct.

Q. That is the method you used in valuing stock of family corporations?

A. No, no. Don't misunderstand me on that.

Q. I am afraid I have. I thought you said you considered the way to value family corporation, the stock of a family corporation was simply a mathematical formula after you had arrived at the fair market value of the underlying assets?

A. The fair market value of the underlying assets don't necessarily—it don't carry over into what is the fair market value of stock if you go to sell it. That is where you have to have an appraiser, because by your method of calculation I might determine that the fair market value of that stock is \$100.00 a share—I don't mean fair market value, but the net worth value when you go to sell it, as you do often in closed corporations, they will pay more for it than what the net asset worth is. And if you get into other situations they might pay less for it.

The appraiser has to determine what is the fair market [292] value as far as sale of that stock is concerned. We see that in stocks listed on the exchange they have a speculative value. They sell



(Testimony of Edward H. Allen.)

way above their net worth. And we see other stocks—I have seen stocks on the Los Angeles Stock Exchange that sell for more than the cash in the bank. So there is no mathematical way of arriving at the fair market value of anything, in my opinion.

Q. If you had had the cash on October 13, 1941, and bearing in mind that you could have purchased American Telephone and Telegraph stock, paying approximately  $5\frac{1}{2}$  or  $5\frac{3}{4}$  per cent on the selling price, and you could have purchased Consolidated Edison stock, paying approximately 9 or 10 per cent on a selling price, and you could have purchased Hamburger Realty Company stock at \$3,900.00, would you have purchased the Hamburger Realty Company stock in preference to those other stocks I have mentioned? A. I would, yes, sir.

Q. Even though \$3,900.00 would give you only about 4.1 per cent return on your money?

A. You are figuring I need the income off my money. I don't need it because I am earning money. I buy this kind because they appreciate in value through the years.

Q. What is going to appreciate in value?

A. Both the assets and the stock.

Q. The stock couldn't help appreciating in value if the [293] assets appreciate in value?

A. If the assets appreciate in value, with 29 parcels of real estate, they own what they have. The American Telephone and Telegraph Company has paid \$9.00 a share a year, and has for many years. The same way with your Edison Company.

(Testimony of Edward H. Allen.)

It is an investment. It is a hazardous investment. The fact it is paying 9 or 10 per cent shows it is a hazardous investment.

Q. Show me the 29 parcels of real estate you refer to.

A. I meant the corporation had——

Q. You have been testifying about Hamburger & Sons. I have been questioning you about Hamburger Realty, as to \$3,900.00. What are we going to get together and talk about?

A. I had——

Q. I asked you about Hamburger Realty. \$3,900.00 is the only figure I used so far. That is the figure you used on Hamburger Realty?

Mr. Tonjes: You can clear the matter up if you confine your questions to one corporation or the other.

Mr. Blum: That is all I have done.

The Court: We are arguing, gentlemen. Suppose you ask the witness a question and elicit an answer from him.

Q. (By Mr. Blum): Explain to me how you used the dividends of the Hamburger Realty Company with respect to arriving at the value [294] of \$3,900.00 a share?

A. The dividends through the years shows the corporation is liquid. They have been able to pay and have been able to earn sufficient to carry them along.

Q. Would you give me your definition of a liquid corporation or liquid assets?

(Testimony of Edward H. Allen.)

A. Liquid assets is one in which there are no liabilities against it; that is like money in the bank.

Q. You feel a piece of property located at 149 West 14th Place is like having \$6,000.00 in the bank? \$6,000.00 being its fair market value.

A. No, not that. You couldn't get your money on that in less than 30 days. You can get the money on the stock of the corporation that owns it right now.

Q. In other words, it is your opinion that all the executives of the corporation had to do would be to put this stock up for sale, stock of the Hamburger Realty Company, at \$3,900.00 a share and they would have handed it over with one hand and picked back the \$3,900.00 a share with the other?

A. No, within a reasonable length of time if offered for sale it would have brought \$3,900.00 a share. You would have to give somebody an opportunity to go through and see these assets.

Q. Did you in any wise capitalize the dividends in arriving at the value of \$3,900.00 per share? [295]

A. I didn't capitalize them, no. I took into consideration what they had been through the years and what the underlying assets were, that they were as sure as you can be of an investment, that they would receive \$3,900.00 a year for many years to come, and with their other assets that they would continue to earn.

Q. Now, assume, Mr. Allen, if you will, with respect to the Hamburger Realty Company, Exhibits 2 and 3 being the profit and loss statement and the



(Testimony of Edward H. Allen.)

dividend statement, were not in the record and that there was no income history and no dividend history, but simply the balance sheet, what, in your opinion, would be the fair market value of the Hamburger Realty Company stock on the basic date?

A. You mean without my making any other investigation than I have made?

Q. I mean having made the investigation you had, except, instead of finding these earnings, you found either zero, zero, zero, or losses both as respects the income, profit and loss statement, and as to the dividends, what would be the fair market value, in your opinion, of the stock of the Hamburger Realty Company?

A. That is assuming I had access to their assets?

Q. That is right.

A. I am satisfied in my own mind it would be more than I have expressed here. [296]

Q. You think it would be more than \$3,900.00 a share?

A. Yes, because that would necessitate me going and learning the individual income from each piece of property and appraising the property.

Q. Assuming you had the fair market value of the property, but we have the situation of having either no income in the company or losses, make either assumption you wish, and assume there is a non-payment of dividends or a deficit, so no dividends could have been paid——

Mr. Tonjes: That question is objected to as assuming matters not in evidence. We have stipulated

(Testimony of Edward H. Allen.)

what the earnings are and the dividend rate. I don't think it adds anything that is, at least, probative.

The Court: Overruled. This is cross-examination. We will allow some latitude since he makes his computations and calculations. Would you mind reframing that question?

Q. (By Mr. Blum): Assuming you had all the facts available to you with respect to the Hamburger Realty Company you now have, including your past experience, with the exception of instead of finding a history of earnings as shown on the profit and loss statement, being Exhibit 2, you found either no income, just zero, zero, or you found losses for those various years shown on Exhibit 2; and assume further that instead of finding a history of dividends paid, as you find on Exhibit 3, you found no dividends paid for [297] those years, what, in your opinion, would be the fair market value of the stock of the Hamburger Realty Company?

A. I couldn't answer that, unless I could go and appraise the assets there.

Q. You can assume that these assets are the fair market value and these are the values at which you would arrive if you went out and appraised them?

A. Well, it would sell for just what you stipulated the net worth of it is. The whole thing would have sold for \$3,927,153.00; you stipulated it was worth that.

Q. And the value of the stock would be \$3,900.27 a share?

(Testimony of Edward H. Allen.)

A. That is a dividend if you went out and sold the property for——

Q. I am not asking you what the value of the assets of the company are. I am asking what is your opinion as to the fair market value of the stock you appraised here, which you said was worth \$3,900.00?

A. It would be whatever would be allocated to each share out of \$3,927,153.00.

Q. There being 1,000 shares, that would make each share worth \$3,900.00 a share?

A. That is, assuming there is no taxes or income taxes or anything of that kind, profit taxes and so forth.

Q. That is right. Now, you said you took into account management. Will you tell us in what respect you used the [298] factor of management in arriving at the fair market value of the stock at \$3,900.00?

A. It has a lot to do with it in a family corporation, the management of the corporation and their policy, if, and so on. And the economy with which they operate the concern and so on, whether they are in disagreement with each other or whether they are friendly and careless. I took that into consideration.

With what I know about them, what I read in the stipulation here, it seems they have been quarreling among themselves, the big stockholders in it. And the train of thought following from that is maybe it has been a good thing for the corporation they



(Testimony of Edward H. Allen.)

have been quarreling. They have had a lot of high-powered attorneys watching that nobody stole this or stole that. They have wasted their assets in attorneys' fees and one thing and another.

As far as management is concerned, to my way of thinking, and what I see here, it don't require any management unless some of these stocks are called, or something of that kind. All you need is somebody to repair and maintain the property and collect the rent; strictly a holding corporation.

Q. In your opinion would harmonious management tend to increase or decrease the value of the stock, other factors being equal?

A. I have seen that both ways. I have been in family [299] corporations and when they are all happy-go-lucky and one wants to get a new automobile and another wants something, you wouldn't have any money left.

Q. I am not talking about a bunch of happy-go-lucky drunkards. I am talking about business people that get along, they are harmonious. Would that tend to increase or decrease the value of the stock, other factors being equal, as against those same people, those same factors and being unharmonious in in their management? Which way would the stock go with the harmonious management as against which way the stock would go with an unharmonious management?

A. It would go the best with a harmonious management; there is no argument there. If you have to

(Testimony of Edward H. Allen.)

assume all things being equal and they are all good business people, you are where you started. .

Q. With respect to the management of the Hamburger Realty Company, what is your opinion of that management from the testimony heard and the stipulation?

A. Just the same as in the other corporations.

Q. What is your opinion of the management of the Hamburger family and the A. Hamburger & Sons Corporation then?

A. As a holding corporation, as I stated, it doesn't take much management except for the physical assets. These houses and buildings and one thing and another require care. That and the investment of the securities from time to time [300] is all that is necessary.

Q. From your experience as a real estate appraiser, isn't it true it is good business management to sell real estate when real estate is on a very high market?

A. You mean it would be?

Q. I am asking if in your experience it wouldn't be.

A. That is the time to sell anything, when it is up; buy it when it is down.

Q. You heard the testimony of Mr. Milliken that proposals had been made to sell the real estate on what was considered to be an advantageous market, and because one director proposed, the other opposed it.

A. Yes.

Q. Now, what would be your opinion of the management of such a company as that, where appar-

(Testimony of Edward H. Allen.).

ently the market condition would make no difference with respect to the selling or purchasing policy of the corporation?

A. Well, now, if they are a holding corporation—you come back to the most successful holding outfit in the world, that is the Astor Estate in New York. They say, “Keep it when it is down. Keep it when it is up.” That is what has made people wealthy here in Southern California.

Q. Are you acquainted with the Vail family of California?

A. Indirectly, by reputation and so on.

Q. Would you say they were worth more in 1939 than in [301] 1927 or 1928 or 1923?

A. I couldn't answer you. Do you mean their real estate holdings?

Q. They were a large real estate holding family?

A. Very large, cattle ranchers.

Q. I am asking about the Vail family. You said many families have more money in California. I am testing your memory or knowledge of any particular fact on that.

A. Vails have made millions.

Q. They have lost millions, too; haven't they?

A. Yes. You have to have it before you can lose it.

Mr. Blum: We can recess any time that is convenient to your Honor.

The Court: You are not going to conclude this morning? You would like to have some time this afternoon?



(Testimony of Edward H. Allen.)

Mr. Smith: It will be an hour.

Mr. Blum: We will continue if you wish.

The Court: Off the record.

(Discussion off the record.)

The Court: On the record.

We will suspend for a brief recess.

(A short recess.)

The Court: You may proceed, gentlemen.

Q. (By Mr. Blum): Mr. Allen, I believe you said you also took into [302] account, in valuing the Hamburger Realty Company's stock at \$3,900.00 per share, liquidation of the company or its expectancy to continue in existence; is that right?

A. I don't think I used the word "liquidation." I think that was in the question; wasn't it?

Q. Yes. I believe you answered yes, that you took into account——

A. Yes.

Q. ——the liquidation of the company or its expected continuance in business?

A. Yes.

Q. How did you take that factor into account?

A. Largely I took it into account that—assuming that there was a willing buyer and a willing seller, there was a ready market of all the assets of both corporations at that time, that there were investment trusts like the Trans-American Corporation, or something of that kind, that would have paid for all of it right now, at that time.

Q. That is, for all the assets in the corporation, would you say?

A. Yes, buy them out lock, stock and barrel.

(Testimony of Edward H. Allen.)

There was a market for it at that time, as there has been for *every* in that respect. I took that into consideration, what they would sell for. I took into consideration the liquidation of all the assets if they wanted to do it themselves, if they might [303] determine it would bring more money than the stipulated value here. I took that into consideration in arriving at the value of this stock. I took into serious consideration that members of the family would buy this stock. The Nathan stock, for instance, at that price is probably worth more to them than it would be to anybody else.

Q. Did you arrive at any conclusion with respect to whether it would be reasonable to expect the corporation to be liquidated or to continue in business?

A. Oh, I think the wise policy for it, if I had anything to do about it, would be to stay with it. It has a wonderful record. To keep it and just go on as they are going.

Q. In other words, your conclusion would be they would probably continue in existence, rather than liquidate?

A. No, I can't answer that, considering the ages of those people. But to their heirs I think, if they called upon me, I would say, "What you have is as good as there is. You had better keep it."

Q. Now, you also said you took into account the minority interest involved in this proceeding.

A. Yes, sir.

(Testimony of Edward H. Allen.)

Q. How did you take the fact there was a minority interest into account?

A. Well, there is ten per cent practically in one corporation and eleven point something per cent in the other. And [304] considering there were six stockholders, I believe, in one corporation, and five in the other, they are pretty near in the same level, you might say, being of the same family and so on. It is a substantial minority interest, in my opinion.

Q. How did you apply that minority interest to the value of the stock?

A. I took that into consideration in arriving at the stock in the corporation beforehand, that some of them owned, say, 20 per cent, and some of them owned 10 per cent. But in any division of it, in the participation or anything of that kind, it is all equal practically per share in value.

Q. Would your value have been any different for the Hamburger Realty Company stock if we were to value 50 per cent of the stock instead of 10 or 11 per cent of the stock?

A. I don't think so.

Q. Now, I believe you testified that you took into account the general market condition on the basic date?      A. Yes, I did.

Q. What was the general market condition on the basic date?

A. The general market condition in Los Angeles was the best that it had been at any time since 1937. Things were pretty tough, you know, during the



(Testimony of Edward H. Allen.)

depression. In 1937 things started to pick up.

Then the President issued the order we were going too [305] fast and we would have to slow down a little bit. That affected us the same as it did the rest of the country. We were the first people to benefit, if there is a benefit, from a war; the contracts that the British Government allocated to this area in October and November of 1943.

Q. Who was the first one out here to get a contract?

A. The Douglas Aircraft and Lockheed were the first two.

Q. Did they get their contracts before the Bell Aircraft Factory and Curtis-Wright Factory in the east?

A. I couldn't answer that. I only know the local situation. With that employment and the high-priced people coming from the east, earning good money, it began to reflect in 1940. The reflection was greater in 1941, and it increased right on until Pearl Harbor.

Q. When you speak of the marketing condition, you are speaking of the marketing condition of the real estate?

A. Local conditions. When the department stores are doing business and merchants are doing business, it is reflected all the way through, you know. It takes longer for it to reflect in real estate than it does in merchandise.

Q. You didn't make any investigation as to what the stock market was doing at that time; did you?

(Testimony of Edward H. Allen.)

A. I watched the stock market all the time.

Q. Do you know whether it was on an upward trend or a downward trend at that time? [306]

A. I think on account of the war situation in Europe, some of the stocks there you might call export stocks had been cut off from the export trade, and some of them were seriously affected. But other stocks, on the other hand, and crops and so on were going up.

Q. You would say that Mr. Eitner's testimony and Mr. Walker's testimony that the stock market was on a slightly down trend at the basic date was not correct?

A. No, I wouldn't say that, if they checked it.

Q. You didn't check it, you don't know whether it was on an upward trend or downward trend?

A. I didn't check it as of that date, no.

Q. When were you first employed by the Respondent to act as an appraiser in this case, Mr. Allen?

A. Mr. Tonjes first called me on this, I think, about a month ago.

Q. At that time isn't it a fact Mr. Tonjes said he would like for you to appraise the May Company building at 8th and Broadway and Hill Streets, and the warehouse at Jefferson and Grand?

A. Yes.

Q. And possibly the 10th and Main building?

A. Yes.

Q. That was the only employment you had at that time; was it not? [307]

(Testimony of Edward H. Allen.)

A. That was what he mentioned, or the three properties that were in dispute.

Q. He didn't mention anything about testifying as to the value of the stock of the Hamburger Realty Company or stock of A. Hamburger & Sons?

A. In the first interview?

Q. Yes.

A. I don't recall whether that was mentioned in the first interview or not.

Q. Now, do you remember the first time that you were asked to express an opinion as a witness in this case, as to the value of the Hamburger Realty Company stock and the A. Hamburger & Sons, Inc. stock?

A. No, I don't.

Q. Well, was it today?

A. Oh, no, it was——

Q. Was it yesterday?

A. It was three weeks ago, I imagine.

Q. Three weeks ago?

A. It was shortly—I had two or three interviews with him. The first time I talked to him—I don't know definitely, I don't have any notes on it or anything.

Q. At that time were you asked to express an opinion as to both the value of the May Company store at 8th and Broadway and Hill, and the warehouse, and the 10th and Main [308] property, and the fair market value of the two stocks involved?

A. Well, as I recall, he said that they thought they could agree or stipulate on all the assets except those three. And it was the stock I would have



(Testimony of Edward H. Allen.)

to appraise, and I would have to form an opinion as to the value of those properties and add to the other stipulation; that is my recollection of it.

Q. Now, directing your attention to the A. Hamburger & Sons, Inc. stock, which you appraised at \$1,000.00 per share, and in that respect directing your attention to Exhibit 4 attached to the stipulation of facts, being the balance sheet of the A. Hamburger & Sons, Inc. now, that balance sheet shows, as you will note, a fair market net worth of \$3,475,516.03. Did you increase that fair market value in Column B by inserting in Column B opposite Item H, being the 104.167 shares of the Hamburger Realty Company, in the value you found?

A. Yes, I added \$409,079.43.

Q. That would give us approximately \$3,884,——

A. ——595.46.

Q. After arriving at that total net worth you then divided that by the number of shares shown to be outstanding, in accordance with paragraph VIII of the stipulation, being 3,774.183 shares?

A. I took that into consideration, yes.

Q. Did you do the actual mathematics? [309]

A. I presume I did. I arrived at \$1,000.00 a share, the value of it.

Q. Before you got 3,774.183 at \$1,029.29, didn't you make the mathematical calculation I just asked you about?

A. Yes, certainly, I did.

Q. As in the Hamburger Realty Company you

(Testimony of Edward H. Allen.)

reduced that to round figures because family holding stocks sell in round figures? A. Yes.

Q. I believe you also testified with respect to A. Hamburger & Sons, Inc. that you took into account the fact that the assets of A. Hamburger & Sons, Inc. differed from the assets of Hamburger Realty Company; is that correct?

A. Yes.

Q. Did I quote you correctly?

A. Yes.

Q. When you say differ, do you mean differ in character?

A. No, not different in character, but the main underlying asset of the realty company is that property at 8th and Broadway. There is no other property comparable to that in the other corporation.

Q. In other words, let me see if I get you correctly, the assets of the two companies would, in your opinion, be substantially the same type of character, except the Hamburger [310] Realty Company has the May Company lease; is that correct?

A. Yes, they both have real estate holdings and both have stocks. The A. Hamburger & Sons have got more cash, if you figure Government Bonds as cash, than the other corporation has. But the other corporation has the tremendous income from the real estate.

Q. Now, how did you take into account with respect to the assets of A. Hamburger & Sons, Inc. the indebtedness of the stockholders to the company in arriving at your value?

(Testimony of Edward H. Allen.)

A. Well, from reading the notes, the promissory notes and the hypothecation of their stock to the corporation; those notes, in my opinion, are just as good as the Government Bonds, as far as security is concerned.

Q. Now, Mr. Allen, referring again to the L. A. Stock Exchange case, in which, I believe, you have already testified you were a witness, and directing your attention to Page 283, with particular reference to lines 18 and 19. You read as much of the rest of the page as you desire. If you want to read further, that is all right.

A. That is all right.

Q. I will ask you if you were asked the question: "What is your business now?"

To which you replied, "Real estate appraiser, real estate broker"? A. Yes, sir. [311]

Q. I will ask you if you were asked—directing your attention to lines 23 and 24 on page 283, you may read as much as you desire. I will ask you if you were asked the question: "How long have you been a real estate broker?" to which you replied, "Between 15 and 20 years"?

A. Yes, sir.

Q. And both those answers are correct?

A. Yes, sir.

Q. Can you tell us, Mr. Allen, when is the last time that you appraised the stock of a corporation prior to this present proceeding?

A. Within the last 30 days.

Q. What stock was that?



(Testimony of Edward H. Allen.)

A. The Ralph Huseman, Desmond's Department Store.

Q. Real estate corporation?

A. It was a holding company. He had about four and a half million dollars worth of property. He owns the ground where the Desmond Store is on Wilshire. He owns the store in Long Beach and properties in Bel-Air, Beverly Hills and things of that kind. Yes, it was a holding corporation.

Q. A real estate holding corporation, substantially?      A. Yes, I would say so.

Q. How did you arrive at the value of that stock?

A. The same method I did here. Some of it was vacant property. Some of it was burdened with leases, like we have [312] here. He owned the building on Wilshire Boulevard. He leased that to the Desmond's Store—had a substantial lease on it—and the other half of the building he leased to Silverwood's Store.

He owned the ground in Long Beach, and that was leased to the Desmond Company stores. He had vacant property out on Wilshire Boulevard, two vacant properties. I arrived at my opinion of the fair market value of the vacant property, as well as the improved property.

Q. You were employed both to appraise the assets of the corporation and the stock; is that correct?

A. Yes, I would have to do that. You can't ever get any place unless you know what the underlying assets are worth.

(Testimony of Edward H. Allen.)

Q. You found the fair market value of the assets and deducted the liabilities from that, and arrived at the fair market value net worth of the Huseman Corporation?

A. The method was the same as here.

Q. I see. You arrived at the fair market value of the assets of the corporation and deducted the liabilities, and arrived at the fair market value of the net worth; is that correct?

A. Yes, but there were other things that entered into it.

Q. You did that; didn't you?

A. I took that into consideration. I first found out [313] what the net value of all his holdings were, and then it was so much per share, works out that way. But you have to have the other figures to start with. It don't make any difference how many shares there are, you have to find out the value first.

Q. You found the fair market value of the net worth by appraising the assets and deducting the liabilities?

A. Yes. You take other things into consideration before that, too.

Q. You take other things into consideration in valuing the underlying assets?

A. Yes.

Q. The location of the property, whether a long term lease or a short term lease or a substantial tenant, and one thing and another like that?

A. Yes.

Q. In valuing the assets of the corporation?

A. Yes.

(Testimony of Edward H. Allen.)

Q. After you found the fair market value and the net worth, in using all those factors, and going into all those things, you divided the number of shares outstanding into that fair market value for Mr. Huseman?

A. It didn't work out that way, in that case. I told them what the net worth of the property was. For me to put down the figure, how much it was per share, I didn't do that. [314]

Q. You came out with a fair market value of the net worth of \$4,000,000.00, then you just told Mr. Huseman his stock was worth \$4,000,000.00?

A. Yes. I told him the net worth of their property was \$4,000,000.00.

Q. Now, have you valued the stock, any other stock of any other corporation?

A. Yes, I am working——

Q. Say, since 1939?

A. Yes, I am working at the present time and have been for two years to determine the value of the stock in the Bolsa Chico Land Company.

Q. The Bolsa Chico Land Company's principal asset is oil land; is it not?

A. That is the principal asset. That is, that is their big income.

Q. That is what I mean.

A. Their big income is from oil wells, over a million dollars a year.

Q. You have been engaged, you say, for the last two years on that, appraising the assets of the corporation?



(Testimony of Edward H. Allen.)

A. Appraising the assets of the corporation, to determine out what the shares are worth per share.

Q. When you obtained the fair market value of the assets, you will tell them whatever the fair market value of [315] the net worth comes out is the value of the shares of stock?

A. I will put the value on the shares of stock.

Q. In that manner?

A. Take all that into consideration, yes.

Q. What else would you take into consideration?

A. What I am waiting for now, is geological reports of the oil content supposed to be under the ground.

Q. That is, to arrive at the fair market value of the oil land?

A. Yes. We have got to figure on the sale of the property and have to get that information before I can form an opinion as to what their net assets are worth.

Q. After you get that information and form your opinion as to what the fair market value of the assets are, you will then deduct the liabilities from that figure and arrive at what will then be the fair market value net worth?

A. I will give them the net worth. They will do that in the office. They will figure out how much that is, the share.

Q. Now, with respect to the prior questions regarding your taking into account the liquidation of the corporation or its continuing in business, I believe you testified that you assumed that the assets

(Testimony of Edward H. Allen.)

could be sold for the fair market value which is shown on Exhibit 1, for the Hamburger Realty Company; is that correct? [316]

A. Yes.

Q. And that the stockholders could then liquidate the corporation and each get out their prorata share of the proceeds of the sale; is that correct?

A. Well, I assume at this price here it could be sold in a lump for that sum.

Q. Yes.

A. And in liquidation I figured that they would employ somebody to appraise the assets and see whether they couldn't sell them themselves for a sum exceeding that. If they couldn't, it would be better to take that figure, of course.

Q. To take the figure which we stipulated?

A. Yes.

Q. Assuming that is the figure, that they would get for the sale of those assets, either individually, or in the lump sum, then they liquidated, it is your conclusion they would receive this \$3,900.00 a share in money; is that correct?

A. If the corporation sold for that, unless there were some charges against it; I don't know anything about it.

Q. Assuming this is on the balance sheet, the fair market value of the net worth was sold for that figure, then you didn't take into account the fact there might or might not be income taxes arising from the sale of those properties; did you?

(Testimony of Edward H. Allen.)

A. That is what I said about that. I don't know what their relation or condition is as far as income taxes are concerned. But I gathered, from reading this here, that the real estate values and so on, they have been through the wringer. I don't assume there would be any federal taxes on the sale of the properties.

Q. What is book value? What is the meaning of book value?

A. My understanding of it is that is the figure that is carried on the books of a corporation as to what the property stands then.

Q. In other words, their cost?

A. Well, it might be cost or it might be an imaginary figure picked out of the air, as is often done.

Q. Exhibit 1, being the balance sheet of Hamburger Realty Company, you see in Column A a book value for the 8th and Broadway and Hill Streets property under lease to A. Hamburger & Sons and May Company a figure, and in Column B is the fair market value of \$4,000,000.00?

A. Yes.

Q. If those assets are sold, that would be a profit made?

A. On that particular piece of property.

Q. Yes. A. There would be, yes. [318]

Q. Looking at 275 shares of Farmers & Merchants National Bank of Los Angeles, the book value is \$71,234.00 and the fair market value is \$106,700.00. There would be a profit there, would there not?

A. Yes.



(Testimony of Edward H. Allen.)

Q. As a matter of fact, in each one of those spots there would be a profit, with the exception of the Angelus Hospital Association and the Retail Merchants Credit Association? A. Yes.

Q. Now, with respect to the——

A. All these others, you see, you figure the depreciation that has been taken on that building down there; that building cost more than that figure there. As I understand it, the sale of that property, they have to account for that depreciation that has been taken.

Q. Assuming this was carried on the books right now, at the cost less depreciation, plus the cost of the land? A. Yes.

Q. If it wasn't, they would have a lesser cost remaining in it; wouldn't they? A. Yes.

Q. Now, we also have 845 South Broadway property, which stands them on the books at \$101,107.46. It shows a fair market value of \$315,600.00; is that correct? [319] A. Yes, sir.

Q. The only other asset shown in that entire balance sheet with a comparable cost is the one at 10th and Main Streets of \$200,006.40, with a fair market value of \$30,000.00; is that correct?

A. That is right.

Q. All the rest are much smaller items; is that correct?

A. Yes, but the fair market value of these items in here, as compared to over here, is a great decrease in any of those in total amount of money; that is true.

(Testimony of Edward H. Allen.)

Q. Well, without going into the actual figures, it would be fair to say if they sold these assets at a lump sum—let's do it this way: The total assets are \$1,947,164.18 book value.

A. Yes, sir.

Q. And the fair market value is \$4,557,632.27?

A. Yes, sir.

Q. And they would have over \$3,000,000.00 profit on the sale; is that correct?

A. That I couldn't answer.

Q. \$2,000,000.00?

A. I don't know their history on their income tax statement.

Mr. Tonjes: I think that is entirely too speculative.

The Court: I think it is rather speculative. [320]

Mr. Tonjes: Many of those items show losses based on the book value and fair market value, some to the extent of \$170,000.00.

Mr. Blum: He stated he was going to sell them as a block, and we have the total book value——

The Court: That is the answer of the witness. What he does and how he values it. To get the full extent of it we will have to determine that.

Q. (By Mr. Blum): You were assuming for both these corporations if they were liquidated the stockholders would receive the sums you have stated?

A. Yes, sir.

Q. Had you completed your appraisal of the 8th and Broadway and Hill property leased to the May Company before Mr. Tonjes told you we arrived at a stipulation as to the value?

A. No, sir.

(Testimony of Edward H. Allen.)

Q. Had you arrived at a preliminary conclusion as to the value?

Mr. Tonjes: I think this is all immaterial. We have stipulated what the value of the building is, stipulated it is \$4,000,000.00. If counsel can show some point in going into the matter, all right.

Mr. Blum: Could it go in under a motion to strike [321] and if it turns out it has no relevancy, I will be glad to have it stricken?

The Court: All right.

Q. (By Mr. Blum): Had you arrived at a preliminary conclusion as to the value?

A. Yes, I had in mind the fair market value of that property as of that date.

Q. Was that figure you had in mind greater or less than that which was stipulated to here?

A. Greater.

Q. Is it not a fact you permitted that difference to enter into your value arrived at in this instance?

A. No, sir.

Q. You didn't?

A. No. It made it very easy for me when they stipulated to the values of these properties.

Q. In arriving at the values which you have for both the Hamburger Realty and the A. Hamburger & Sons, Inc., what research did you do with respect to other securities or the security market?

A. I didn't do any, in particular. I know the security market, what dividend rates are and what money is worth, and all that kind of stuff. That is my business. I know it. But I didn't go to any



(Testimony of Edward H. Allen.)

financial chronicle or any of those [322] manuals and run them down, as to this particular one and that particular one, because I didn't think it was material.

It isn't comparable, in my opinion, what some holding company is doing in another city, that has entirely different assets than here, or some other outfit in a different line of business. I thought I had plenty to work on with this property itself.

Q. That is where you concluded to stop; is that correct?

A. Yes. I know the real estate market here; I feel I do.

Q. Mr. Allen, you have been using almost throughout your testimony the words "holding company." Where in the record do you have any reference to the fact either of these companies are a holding company?

A. Nothing, except the testimony of the witnesses you put on here. My own opinion, I think, is it is a holding company.

Q. What testimony, as to the witnesses we put on, was there that these were holding companies?

A. I think the last gentleman on the stand here.

Q. He was expressing an opinion in answer to questions asked by Mr. Tonjes with respect to it being a holding company?

A. I think his answer was correct.

Q. You say you think it was correct?

A. Yes.

(Testimony of Edward H. Allen.)

Q. And you gave weight to the fact that was a holding company, in arriving at the value; is that correct?

A. I took it into consideration. I didn't have to anticipate they were in a business, they were manufacturing something, they were building houses or buying and selling and the hazards of loss didn't involve in it. I had no information [324] that they were doing anything but holding this property and enjoying the benefits of that holding. That is the only information I have about either one of them.

Q. Where did you get the information they were just holding the property? Do you know the date they acquired any one of these properties?

A. No.

Q. Except possibly the May Company building?

A. No, I don't.

Q. For all you know these properties, each one of these other properties, may have been purchased the day before the basic date?

A. That is true.

Q. They may have been sold the day after the basic date?

A. That is true.

Q. You state that you are generally familiar with the securities market, I believe?

A. Yes; in its variations, yes.

Q. Do you know whether the market on real estate securities in Los Angeles was up or down at the time?

A. 1941, in October?

Q. Yes.

A. It was on the upgrade.

Q. It was?

A. Yes. [325]

(Testimony of Edward H. Allen.)

Q. Do you know what any particular security at that time of any real estate corporation was selling for, in relation to its assets?

Mr. Tonjes: Will you define the word "security?"

Mr. Blum: Stock, bonds, preferred stock, common stock or bonds.

Mr. Tonjes: There is a great difference between the interest of a stockholder and bondholder. I think we should confine ourselves to one or the other. Ask about both if you want, but one at a time.

Mr. Blum: I will give him any latitude. Common stocks, or preferred stocks or bonds.

Mr. Tonjes: The question is objected to as being too broad.

The Court: The question is whether he knew of the market of any of those things on the date. Is that correct?

Mr. Blum: That is correct.

The Court: You may answer.

The Witness: Of a holding company?

Q. (By Mr. Blum): Of a real estate company, holding or otherwise.

A. I don't know of a real estate company that had its stock listed on the Los Angeles Stock Exchange.

Q. Do you know of any over-the-counter transactions? A. No, I don't. [326]

Q. Would you have any way of finding out over-the-counter transactions?

A. Yes, I could inquire, but I don't know of a



(Testimony of Edward H. Allen.)

holding, real estate holding corporation, that you can buy stock over the counter even. The ones I am familiar with are ones that are closely held, like this one is.

Q. You made no investigation at all with respect to either the local or the national market trend or condition in determining the value of these stocks; is that correct?

A. Except my own knowledge.

Mr. Tonjes: What market do you mean?

Mr. Blum: The securities market.

The Witness: Except my own knowledge as I read it every day in the paper.

Q. (By Mr. Blum): Now, I believe you said you started the valuation of these properties about a month ago?

A. I think it was about a month ago, I am not sure.

Q. October, 1941, was four years ago. Do you remember the value of any security as of October, 1941, listed or unlisted?

A. No, I don't. Some I own myself I couldn't tell you what they were in '41. They are on the New York stock market and on the local stock markets, but that particular date I couldn't recall. [327]

Q. Could you tell us what the Dow Jones averages were——

A. For that date? No.

Q. Now, you stated that you would give the stockholder a reasonable length of time within which to sell this stock, in order to obtain the values you placed on it; is that correct?

A. Yes, sir.

(Testimony of Edward H. Allen.)

Q. What, in your opinion, is a reasonable length of time?

A. Stock of that value, 60 days. The physical real estate, I think six months is a reasonable length of time for valuable property to find a purchaser.

Q. In your opinion, then, this stock of either of the corporations could have been sold within 30 to 60 days for the value you placed on it?

A. If it had been offered for sale I think it could have been sold in 60 days.

Q. Do you have in mind any particular type of purchaser?

A. Yes, I have in mind the other stockholders in this corporation. I have in mind an investment trust buying all the property, buying it all, both corporations.

Q. What I am asking is do you have in mind any particular purchaser for the stock we have involved in this proceeding? [328]

A. Yes, when they bought this stock they would buy the——

Q. I am not asking about that. I want to know the particular purchaser for the 104 shares of one corporation and 425 shares of the other corporation we are valuing in this proceeding.

A. Yes, but all these questions, I misunderstood you. I thought you were talking about fair market value all the time, and you say you don't know whether the other people would sell or not. I don't either. I am forming an opinion of fair market value which means a willing buyer and willing seller.

(Testimony of Edward H. Allen.)

It would all bring, this sum I am putting on it, I am putting it on every share, would bring the sum I am putting on this share.

Q. Let's suppose the executors of this estate needed money to pay the estate taxes and other expenses of administration. They could have borrowed it. They didn't have to sell, but they decided they would rather sell the two blocks of stock. But the other stockholders did not want to sell their stocks, they wanted to hold them. Now, do you have in mind any purchaser or any type of purchaser for the stock owned by this estate, leaving out the other stockholders entirely, at the figures you have stated?

A. Yes, I think the subsidiaries of the Bank of [329] America would have purchased it. I think investment trusts would have purchased it, with a view in mind of buying the others from time to time—the age of those people—and acquiring all of it eventually. In other words, getting a foothold into a corporation of this type.

Q. Did you give consideration to the fact that a large block of this stock, I think approximately 33½ per cent of each of the stocks, is in the M. A. Hamburger Trust, the trustees involved?

A. Yes.

Q. And the sales would have to be by the trustees, and that there may or may not have been limitations on the right to sell stock?

A. Oh, yes, I took that into consideration.



(Testimony of Edward H. Allen.)

Q. Are you familiar with the bonds of the Loew's State Building, 6 per cent bonds of the Loew's State Building? A. Yes, sir.

Q. The Chester Fireproof Building?

A. Yes, sir.

Q. When is the Loew's State Building 6 per cent due; do you know?

A. That building was built in 19—I forget just the date. I appraised it and went to New York and testified about the bond issue you are mentioning there. I forget the date, the date it was built now. The Chester Williams [330] Building was built in 1926, I think, and that building was—Loew's State Building was built in '22 or '23, as I recall it.

Q. Do you know what the average price of those bonds were on the basic date involved here?

A. No, but I imagine they were in the '80's.

Q. And the Taft Building, 6 per cent, are you familiar with the Taft Building and 6 per cent bonds?

A. Yes, and their financial difficulties.

Q. And the Foreman & Clark Building, 6 per cent? A. Yes.

Q. And the Roslyn Fireproof Building, 4 per cent? A. Yes, sir.

Q. Do you know what the average price of those bonds, all of those I have mentioned, would have been at the basic date?

A. Well, I imagine the average price of the bonds would have been about 85, 86. Leave that Taft one out there, though; that went through at

(Testimony of Edward H. Allen.)

77. None of those properties you mentioned there are those bonds secured by anything but the building.

The Court: I suggest, gentlemen, we are getting a little bit far afield. I don't believe I care to hear you at length examine this witness about a group of other buildings. [331]

Q. (By Mr. Blum): Did you consider the securities to be liquid securities or non-liquid, with the meaning attached to liquid, of the salability of them, marketability of them right away or rather rapidly?

A. You mean those securities these corporations owned?

Q. No. I am talking about the Hamburger Realty Company stock and the A. Hamburger & Sons, Inc., stock.

A. I think if they had been offered for sale with the local brokers here they could have been sold within 60 days at that price.

Q. The securities we are valuing here?

A. The shares of stock.

Q. Did you consider whether the purchaser of these securities could or could not have elected a director in these corporations?

A. No. But I just assumed a man, if a man invested that much money in a corporation and moved in there he would have some representation on the Board, especially where they were quarrelling so much; they would like an ally, I imagine, any of them.

(Testimony of Edward H. Allen.)

Q. Well, without any accumulative voting to that stock, could 10 per cent have elected a director?

A. I don't know if there is any provision against cumulative voting of the stock. Is there?

Q. It is in the stipulation.

A. It is in the stipulation.

Q. Yes?

A. The stipulation can't overcome the section of the Civil Code that provides you can have it.

Mr. Tonjes: There is no provision for it. There is no stipulation it is provided.

The Witness: That wouldn't prevent the corporation from obeying the law, the fact you entered into a stipulation.

Q. (By Mr. Blum): You are assuming under the Code, then, that 10 per cent of the stock or 11 per cent, I believe you testified in one company, would give them the right to elect a director?

A. I can't answer that. The others might split it up, but they have got—if there are five directors they have five votes for each share of stock.

Q. Well, you say you assumed that the purchaser here would have a representative on the Board of Directors?

A. Yes, I assume a man that would go in there and put that sum of money in it would get acquainted, at least, with the Directors of the Board and talk with some of them. I don't think they have got to the place they wouldn't talk to anybody.



(Testimony of Edward H. Allen.)

Q. Did you assume that the purchaser could or could not have elected a director to the Board of Directors? [333]

A. I didn't assume that. I just assumed he could cast 50 votes in an election. Whether that would be enough to put him on, if he wanted to be on the Board, I couldn't answer.

Q. Did you take into account the effect of any war or a war scare on inflation?

A. Yes, I have lived through the last one and this one, too, and it was in my mind.

Q. Did you take that into account in arriving at the value of the securities at all?

A. As of that date, you couldn't have done that as of that date, but now you can. And the main value now of that property is the depreciation that can be taken on all these buildings. If a man could have purchased that property or those shares of stock on that date at the price, in my opinion, they were worth, he would have made a very lucky investment.

Mr. Blum: I didn't ask you that. I move it be stricken.

The Court: It will be stricken.

Q. (By Mr. Blum): I asked you, did you take into account the fact there was a war going on and a war scare at the basic date, and its effect on inflation?

A. Yes. That was reflected in the market, both the security market and every other market as of October, 1941.

Q. In what way? [334]

(Testimony of Edward H. Allen.)

A. Well, everybody was tense and nervous, and they were letting the big tremendous contracts for ships and food, sugar, cereals of every nature and description, letting these contracts for steel goods.

Q. How was it reflected in the market?

A. Equipment and machinery, everything of the kind, there was a great demand all of a sudden in this United States for things along that line. The Germans were in Russia and it looked black from a war angle. It looked like we were going to get in, and we were preparing, not necessarily for ourselves, but we were preparing material for others, and there was activity.

Q. And the black look of the war, what effect did that have on the security market?

A. Some securities skyrocketed clear up out of sight, if they had a contract.

Q. Name one.

A. Airplane factories.

Q. In 1941 name me any one.

A. I don't know which they were.

Q. How do you know they did? Give an example.

A. Douglas.

Q. What was it selling for?

A. I don't know.

Q. Was it selling higher or lower in October, 1941, [335] than it was in August of 1937?

A. Don't go back that far. They just got their contracts from the British in October and November, '39.

Q. Do you know which it was? I can go back.

A. No.

(Testimony of Edward H. Allen.)

Q. You answer whether you know or not.

A. No, I haven't any record here of any of those things.

Mr. Blum: That is all.

### Redirect Examination

By Mr. Tonjes:

Q. When you stated that you weren't familiar with how long the assets were held by the various companies you knew, of course, that the property known as the May Company property had been owned for many years by the Hamburger Realty Company; did you not?

A. Yes. I can remember when they bought it.

Q. The lease was in evidence and it shows that.

A. Yes.

Q. That is the principal asset of the Hamburger Realty Company, isn't it?      A. Yes, sir.

Q. Were you here yesterday when Mr. Milliken testified that there was practically no activity, business activity at all in the corporations with respect to sales and [336] acquisitions?      A. Yes, sir.

Q. And from that you concluded that these properties were owned for some time?      A. Yes.

Q. Now, one other question. When you testified that you divided the number of shares of the corporations into the total value of the assets of the corporations—the total value of the assets or the net worth, do you intend to convey the thought that was all you did, to arrive at your conclusion?

A. No.



(Testimony of Edward H. Allen.)

Mr. Blum: That is objected to as being ambiguous, argumentative, what he intended to convey; it is what he did.

The Court: Overruled. He may answer.

The Witness: No, sir.

Q. (By Mr. Tonjes): You took many other factors into consideration? A. Yes, sir.

Q. Now, with respect to all of the securities which were called to your attention, the securities on the Chester Williams Building and the Foreman & Clark Building, on all those, you recall they were mentioned to you a few moments ago?

A. Yes. [337]

Q. They would clearly represent an obligation to pay, would they not, and contain no interest in any fee of any property? A. That is true.

Mr. Blum: That is objected to as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness.

The Court: That is true. He has answered. We will let his answer stand.

Mr. Tonjes: That is all. The respondent rests, your Honor.

The Court: Is there any further cross-examination?

Mr. Tonjes: Pardon me.

### Recross-Examination

By Mr. Blum:

Q. Now, Mr. Allen, I asked you on cross-examination to show us how you used each one of the

(Testimony of Edward H. Allen.)

factors in arriving at your value of the two corporations. And you said you considered them. Now, on redirect examination you answered the question whether you took into consideration and used, as I understand it, the other factors in arriving at the value which you arrived at, these other factors. Now, I don't want to take the time to go through each one of those factors again. Will you tell us how you used these other factors, other than the asset value of the corporation in arriving [338] at this value?

A. Well, the factor of dividends or the factor of earnings, for instance, were sufficient and had been sufficient through a bad depression we had here, to carry on these corporations, pay the expenses and still make money.

Q. How do you know that? Do you have the earnings for 1932 and 1933, 1931 before you?

A. No.

Q. How do you know they had any income from those years?

A. I know May Company never defaulted in an obligation; Moody's Manuals show that.

Q. Hamburger Realty Company wasn't receiving any income from May Company in 1931, 1932, 1933?

A. No, they didn't need any. They were in such a liquid position all the time they didn't need it.

Q. I see.

A. From that angle there was sufficient——

(Testimony of Edward H. Allen.)

Q. You are testifying that Hamburger Realty Company and A. Hamburger & Sons, Inc., had a net income in 1931, 1932, 1933, of your own knowledge?

A. No, I am not testifying to that at all. I said they had sufficient money to go through a very severe depression, and they went through it.

Q. General Motors had enough to go through; didn't [339] they? A. Yes.

The Court: I suggest you gentlemen are now arguing with each other and not helping the court.

Q. (By Mr. Blum): Go on with your explanation as to how you used these factors.

A. That was the factor I used, as for security, the income these corporations had gave them security to go through a depression and come out with their basic assets, which are real estate. In my opinion, as long as you have got a piece of real estate that is free and clear, you own something in Los Angeles. You have got a mortgage on it, it is a different story. Their property is free and clear. That is their basic asset. That is where they have made all their money.

Q. That is how you used the income fact they had the real estate producing income?

A. Yes, they have got real estate producing income and they have other securities, too, that are as good as gold.

Mr. Blum: That is all.

Mr. Tonjes: That is all.

(Witness excused)



Mr. Tonjes: That concludes the respondent's case.

The Court: Is there any rebuttal? [340]

Mr. Blum: No rebuttal, your Honor.

The Court: Very well. The proceeding will stand submitted. Do you desire to file briefs?

Mr. Blum: Yes, sir.

The Court: Will briefs under the rule be sufficient, 45 days?

Mr. Blum: Yes, sir, your Honor.

Mr. Tonjes: That will be satisfactory, your Honor.

The Court: You may file contemporaneous briefs within 45 days.

Mr. Tonjes: That is satisfactory.

The Court: You will have 35 days after the filing of briefs on one side within which to file a reply brief, if you desire to file a reply brief.

Mr. Blum: Yes.

The Court: Very well. Thank you, gentlemen.

(Whereupon, at 1:00 p. m., on Friday, October 5, 1945, the hearing in the above entitled matter was closed.) [341]